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State Railroad Commissions,

AND

HOW THEY MAY BE MADE EFFECTIVE.



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State Railroad Commissions,  
AND  
HOW THEY MAY BE MADE EFFECTIVE.

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Ann Arbor High School.

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AMERICAN ECONOMIC ASSOCIATION,  
November, 1891.



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## PREFACE.

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This paper had its origin in a table, showing the powers of State Railroad Commissions, appended to a thesis for the degree of Master of Arts at the University of Michigan; and in a paper, read before the Political Science Association of the University in 1887, on the subject of Railroad Commissions.

With the encouragement and advice of Dr. Henry C. Adams, I was induced to make a further study of the subject, the results of which are contained in this monograph.

I desire to express my indebtedness to Dr. Adams for the assistance he has rendered in securing the data contained in the tables; also to the state railroad commissioners and their secretaries, in the various states of the Union, for their courtesy and promptness in responding to my questions.

F. C. C.

ANN ARBOR, MICH.  
Oct. 20, 1891.



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## INTRODUCTION.

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It is the aim of this monograph to present a practical solution of some, at least, of the difficulties involved in the railroad problem, and to suggest a policy for the more efficient regulation and control of that most important of all our *quasi*-public industries.

The practical problem proposed is largely one of ways and means and may be stated thus: How may our present system of regulation of the railroads by means of commissions, through the ability of that system to adapt itself to the changes of our rapidly developing industrial society, be made more effective, and this efficiency guaranteed for the future?

That the subject may be presented logically and as completely as possible, it is necessary, first, to give a sketch of the origin and development of railroad legislation, and railroad regulation by means of state and interstate commissions; and, secondly, to analyze and compare the methods of supervision and regulation of railroads by the various states of the Union, and to suggest certain improvements and changes which, it is believed, would make the commission system successful and effective.

This paper, accordingly, divides itself into two parts, as follows:

I. The history of the growth and development of the commission system.

II. A discussion of the steps necessary to secure greater efficiency in the commission system.



## State Railroad Commissions and How they May be Made Effective.

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### I.

#### A SHORT HISTORY OF THE ORIGIN AND DEVELOPMENT OF STATE RAILROAD COMMISSIONS.

There is a history of railroad legislation and regulation as well as of railroad building and transportation. Both have been making rapid strides in recent years, in spite of the fact that the latter preceded the former in point of establishment by nearly a score of years. While on the one hand railroad building has gone beyond the needs of the country, on the other railroad regulation has hardly attained to that standard of efficiency which the needs of the country require.

In America, as in England, railroad building has passed through three distinct stages of growth, each of which covers about an equal period of time. These stages are:

- (a.) Period of enthusiastic construction..... 1830-1850
- (b.) Period of bitter competition. 1850-1870
- (c.) Period of extensive combination..... 1870-1890

The history of railroad regulation likewise divides itself, according to three distinct policies in vogue



at different times, into periods of about equal length corresponding to the respective stages of railroad building.

- (a.) Period of freedom from interference..... 1830-1850
- (b.) Period of general laws and statutes..... 1850-1870
- (c.) Period of state interference, or control through commissions..... 1870-1890

In the pages which follow, each period will be treated in its historical order and the development of legislation parallel with railroad building traced.

(a.) *First Period.*—During the first period unbounded confidence was shown in the railroad; enthusiasm for railroad building ran high, and any legislation proposed for regulating the railroads was pronounced harmful, unjust and unwise. In consequence one finds little or no restraining legislation during this period. The state took the initiative in every railroad venture, and backed it up with large credit and unqualified support. Railroad projectors and managers were treated as public favorites and were allowed “to shape the laws to suit themselves.”<sup>1</sup> Money, lands, privileges, municipal assistance, charters and other forms of state aid were granted without opposition or question. Maryland on February 28, 1827, and Virginia on March 8, the same year, granted charters to the Baltimore and Ohio railroad. The former led the movement with a grant of \$500,000 in 1828. In May, 1830, fifteen miles of

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<sup>1</sup>Judge Cooley: Letter to Senate Committee, 1885. Appendix, p. 10.

this road were opened for traffic. The same year in New York the Mohawk and Hudson,<sup>1</sup> chartered in 1826, opened seventeen miles of line to travel; and the next year, 1831, the Saratoga and Schenectady was opened for twenty-one and one-half miles. On January 1, 1836, there were ninety miles of railroad in operation in New York state; two hundred and sixty-five miles in Pennsylvania, and one hundred and eleven miles in Massachusetts. The total of railroad mileage in operation in the United States in 1836 was 1273.

In 1835 the state of Maryland subscribed \$3,000,000 to the stock of the Baltimore and Ohio road, and the city of Baltimore an equal amount.<sup>2</sup> The state of Massachusetts loaned \$4,000,000 to the Boston and Albany road. Kentucky, New York, South Carolina and other states loaned money and credit during this period of frenzy in railroad building. Aside from state aid, private loans and aid were forthcoming. Subscriptions to the stock of railroads took the form of popular movements. As the railroads spread westward, so spread the excitement and the increasing demand for more. Local lines sprang up in every state east of the Mississippi river, and before the fifth decade of the century was completed Michigan had three hundred and forty-two<sup>3</sup> miles of road; Illinois, Ohio and Indiana, one hundred and eleven, five hundred and seventy-five and two hundred and twenty-eight miles respectively. The total railway mileage for the four states in 1850 was 1256, or nearly as many miles as the

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<sup>1</sup> Now a part of the New York Central system.

<sup>2</sup> Niles Register.

<sup>3</sup> "Poor's Manual," 1869-70.

entire country contained fourteen years before. But the greater part of the building was being done in the eastern states, especially in New England, and more rapidly than in any subsequent period. Scarcely a step had been taken in the way of legislation other than for the promotion of schemes for construction. There was greater fear expressed at this time that the roads would not be built fast enough than that they would be overbuilt. The enthusiasm was, in fact, directed wholly toward building railroads and not at all toward regulating and controlling them. Entire freedom from interference characterizes the period.

(b.) *Second Period.*—About the year 1850 radical changes began to appear in the organic law of several of the eastern states, mainly on account of the failure of a large number of the great railroad schemes into which the states had been drawn by their over-enthusiastic and personally concerned legislatures. New York,<sup>1</sup> Illinois, Ohio and Michigan passed general railroad laws allowing any number of persons, not less than five, to build railroads wherever they chose, provided they had the requisite amount of capital. The laws were but indifferently enforced. The fever for railroad building was now even more intense in the central states than it had been in the eastern. The only benefit—which later experience has proven not to have been a benefit—derived from these general laws was that they relieved the legislatures of the necessity of passing special acts.<sup>2</sup>

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<sup>1</sup>In 1848 and 1850; Illinois, in 1849; Ohio, in 1854; Michigan, in 1855.

<sup>2</sup>"Railroad Transportation." A. T. Hadley, p. 125.

Michigan conceived the plan of building three separate roads from east to west through her territory, from Port Huron, Detroit and Monroe on the eastern boundary to respective points on Lake Michigan, and proposed to operate the roads herself.<sup>1</sup> It is needless to say that the scheme was a complete failure. After ten years of expensive experience the roads were sold to companies chartered to complete them. This experience was sufficient to satisfy the ambition of other states that were at the time advocating a similar policy. The constitution of Michigan (1850) put the matter forever at rest by inhibiting that state from all future connection with railroad building or other schemes of internal improvement.<sup>2</sup> Pennsylvania, Illinois and Virginia had similar experiences.

About this time, too, railroads began to connect with each other across state boundaries and a few parallel lines appeared. Separate links, consisting of separate roads, built mostly by local capital, were joined into complete chains. For example, in 1853, by the consolidation of seven distinct roads: Albany and Schenectady, Utica and Schenectady, Syracuse and Utica, Auburn and Syracuse, Auburn and Rochester, Tonawanda,<sup>3</sup> and Attica and Buffalo, a complete line of railroad was formed and organized under one management, connecting the Hudson river with Lake Erie. Thus the New York Central came into existence. Soon after, this system was

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<sup>1</sup>Statement of William McPherson, Jr., Committee of Railroads, State of Michigan to Senate Select Committee, 1885. Appendix, p. 33.

<sup>2</sup>"Michigan." Hon. T. M. Cooley. "American Commonwealth Series," p. 300.

<sup>3</sup>Rochester to Attica.

united with the Hudson River road and the Harlem, and New York city came into close touch with the Great Lakes, and fierce competition arose between railroads and water ways, which, up to that time, had enjoyed uninterrupted prosperity. In 1851 there were continuous lines westward as far as Cincinnati and Cleveland. Toledo was joined to Cleveland in 1853. Chicago had been reached in 1852. Two years later there was through rail communication as far westward as the Mississippi river.

Meanwhile competition had been relied upon to regulate whatever evils existed, more particularly those of excessive charges. Rapid extension to the west and south was favored and encouraged by the policy of land grants.<sup>1</sup> Different roads were already reaching out for the same traffic in the same territory. Towns and villages increased with marvelous rapidity, and inducements were being thrown out constantly for competing lines. The mistaken belief was that the more roads the cheaper would be the rates. Experience proved a dear teacher. The roads began to feel the strength of their position almost without foreseeing it, and soon came to realize their freedom from all restraint, while the people, on their part, trusted blindly to the laws of competition as sufficient to regulate the traffic.

Wars were waged between competing roads, which had an injurious effect on trade and commerce. Fear, jealousy and bitter feelings were aroused, until, by the crisis of 1857, a decided check was put upon railroad building. Land grants likewise ceased. Then came the civil war. As a result railroad building declined from 3,647 miles in 1856

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<sup>1</sup>Forty-sixth Congress, Third Session, H. R. Ex. Doc., 47, part IV.

to 651 miles in 1861, the lowest mark thus far in its history. During the war the railroad received scarcely any attention from the people or from the legislatures of the different states, their minds being occupied with but the one thought, the suppression of slavery. The only scheme of any magnitude was the building of the Union Pacific road, encouraged and supported by the national government for political ends by means of subsidies of land and credit. But after the war, during the last five years of the second period,<sup>1</sup> the railroad, in common with all other industries, flourished. A number of states had provided in their constitutions, however, for free competition among roads, by empowering their legislatures to pass laws against combinations of parallel or competing lines.

In the East, enthusiasm for railroads had somewhat abated, and the people began to seek the causes of the difficulties into which they had fallen. One of the first facts of which they became convinced was that competition could not be relied upon to regulate transportation by rail.<sup>2</sup> They realized that too much power and freedom had been accorded to the roads; that under the shelter of law competition was tyranny; and that the time had come to apply legislative restraint. The commission system had already been thought of and utilized for the purpose of securing safety and protection of life and limb to the patrons of the roads. The thought was so well received by the people of the East, that four states, New Hampshire, Vermont, Connecticut and Maine, went so far as to enact commission laws.

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<sup>1</sup> *Vide Classification*, p. 11 *ante*.

<sup>2</sup> Cf. *The American Commonwealth*. By Bryce. Vol. II, pp. 407-409.

But in the West, on the contrary, the sentiment of the people for untrammelled building and unhindered competition was strong. Here excitement again ran high, and all the schemes formerly practiced for procuring money and means to build roads, besides many new ones, were successfully carried out. Legislatures were bribed and controlled. Congress was pressed for grants of land to trans-continental lines already surveyed, if not already begun. Land grants also were forthcoming, now from the national government directly, and not from the states, as before the war.

There was an awakening, a quickening in every avenue of industrial life. The pulse of trade beat faster than it had ever done before. Railroads were projected everywhere, and still, from all sides, there came the continual call for more. The legislatures of the western states,<sup>1</sup> supported by the people, unhesitatingly granted concessions to the roads. They granted also the exercise of certain charter rights; and now, for the lack of power to control and limit these privileges, the legislatures find themselves hampered in no small degree.<sup>2</sup> The result of the excitement was a trebling of the annual increase in railroad building between the years of 1868 and 1871. Railroad construction was extended far in advance of actual public needs,<sup>3</sup> and the traffic ceased to afford remunerative returns on the capital invested, except as the roads resorted to underhand and secret means of making profits. No

<sup>1</sup>There are a few unimportant exceptions but such was the general policy. Cf. Hadley, *id.* p. 37.

<sup>2</sup>*Vide* President Blackstone's Report. "Twenty-seventh Annual Report of Chicago and Alton Railroad," 1889, p. 46.

<sup>3</sup>Cf. Hadley, *id.* p. 131.

legislative check was placed upon the granting of charters, consequently there was no limit to railroad building. Neither was there any remedy for the prevailing evils, nor any guarantee of a better condition of affairs in the future. Not only in the Mississippi valley states was this case, but the re-awakening in railroad building which occurred after the war, flowed in a wave back over the seaboard states. In 1868 in Massachusetts a charter was granted authorizing the construction of a line parallel to a part of the Boston and Maine railroad at the average distance of one mile from it. In 1869 there were three charters granted for roads from Taunton to Providence. A negative decision as to any charter for railroad building had no finality; but the bill having been repeatedly introduced into the legislature, the controversy always ended in the charter being granted.<sup>1</sup> The process necessary to ensure success was a combination of persistency and log-rolling.<sup>2</sup> Had building been checked by the censorship of a board of commissioners, and charters granted by the state only upon a showing of necessity, to be determined by the population, density of traffic, and like warrantable reasons, a large percentage of the roads which to-day constitute the disturbing element of interstate commerce would never have been built.

The people began to be alarmed at such extensive overbuilding. The great blocks of Pacific railroad stock, thrown upon the market at the time, would not float; confidence waned, fear arose, credit was

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<sup>1</sup>"Second Annual Report of the Massachusetts Railroad Commission."

<sup>2</sup>*Id.* p. 7.



lost, the crisis came, and the result was that well-known event in financial history—the panic of 1873.

To sum up briefly what was accomplished in the way of regulation during the second period, it may be said that, aside from the experience gained, the constitutions of various states had expressly declared that the legislature should have full power to act upon railroad matters, clearly showing that a necessity for such action had arisen. Besides this the legislatures of several of the eastern states enacted laws for the safe running of trains, for better bridges and station houses, and for greater efficiency of service and attention to public needs. During this time forces had been at work to secure a more effective method of administration. This movement found expression in laws passed for the creation of commissions; but inasmuch as this policy underlies the legislation of the succeeding period and gives it its character, it is fitting to trace the development of that movement more at length under the head of the third period.

(c.) *Third Period.*—Between the years 1867 and 1870 an agitation known as the Granger movement arose in the West as the result of the state of things that existed there at that time.<sup>1</sup> The railroads had until now considered themselves sole proprietors of their vested rights under their charters and grants. They considered that the people had no power to interfere with the operation and management of the roads, but must pay what was asked and accept what was offered. Much uneasiness and dissatisfaction could not fail to be manifested by the people, and this feeling took the form of bitter hostility towards

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<sup>1</sup> *Vide ante*, p. 18.

all railroad corporations. As Professor Hadley has well said, "they were dangerously near the point where revolutions begin." The very low price of produce, constantly increasing acreage of production, and abundant harvests, added to the disturbed state of the country upon financial questions, especially in regard to the inflated currency, caused the agitation to grow more bitter daily. Just at this time also steel rails came into use, changing in large measure the means of transportation and practically unlimiting (allow the word) the amount of load that could be carried.<sup>1</sup> This made the railroads successful competitors with waterways which had been relied upon heretofore to regulate rates of charge. The influence of the waterways decreased to such an extent that state regulation and interference in the matter of rates became a necessity. The legislatures, however, were largely under the control of powerful corporations and no redress could come from that source without radical changes taking place. The only course left was through popular agitation; and a crusade was carried on to rescue the rights of the people, to hold up to the light the condition into which the transportation industry had fallen, and to convince the people how incompetent the common law was to extricate them from the power of the railroads. Here it is that one finds the real beginning of an enlightened public opinion on the railroad question, which has ever since been fostered by inquiry, discussion and criticism.

The elections of 1870 and 1871 in Illinois were hotly contested. The farmer vote was pitted against

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<sup>2</sup>Cf. Hadley, *id.* p. 105.

the city and corporate vote. The former was triumphant because of the fact that it received the support of a majority of the towns throughout the state. These towns, being non-competing points, had been compelled to submit to extortion and discrimination beyond endurance. Two successive legislatures were returned, thoroughly opposed to monopoly and corporate power. A new state constitution was adopted in 1870, making it mandatory upon the general assembly to enact certain laws for the control of the railroads. Iowa in 1874, Nebraska and Alabama in 1875, and California in 1879 drew up new constitutions containing similar provisions, and each declared the railroads to be public highways and free to all persons for the transportation of their persons or property under such regulations as might be prescribed by law. In Illinois they went so far as to make it the duty of the legislature to fix schedules of maximum rates; and in many of the states, commissions were created by statute to see that the laws were enforced. California, however, went a step further than the rest and adopted the commission system as a part of the organic law.

But while the strength of the commissions, then established, was due most largely to the pressure of public sentiment that surrounded them, the fundamental principle and function of commissions, *i. e.*, to look after the affairs of the railroad and supervise its management had its rise at a much earlier date. Let us turn back at this point to note the history of that movement. The commission system, or the public interference in railroad management is more or less familiar to all, owing to the fact of its promi-

nence among the economic questions of the day. But just how the present development of the commission system has been attained may not be so well understood. To make clear what the nature and functions of the commissions already referred to in the preceding period<sup>1</sup> were, the causes which first gave rise to them must be noticed.

From the time the first railroad was built fears were expressed that the new method of locomotion would be unsafe. On this ground the earlier projects for railroad building were repeatedly defeated in England, as is vividly told by Mr. Francis.<sup>2</sup> Several persons were killed during the first few months of trial, among whom was Mr. Huskisson, a prime mover in railroad enterprises in Parliament. This and other accidents and failures, which usually attend the introduction of a new enterprise, gave ground for the people's fears. The first and most natural step was to attempt to regulate the running of trains and secure as far as possible absolute safety to the patrons of the roads. The idea took tangible form in the establishment of commissions both in England and the United States, almost simultaneously. New Hampshire is accorded the credit of establishing, in 1844, the first board in this country to inspect roads and report to the legislature. This was the main feature of the law and has been one of the functions of every commission created since the first. The plunging of a passenger train into an open draw led the legislature of Connecticut in 1853 to create a commission in that state, whose main duty it was to inspect the roads and make all inquiries into the

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<sup>1</sup> *Ante*, p. 17.

<sup>2</sup> "History of English Railways." (2 Vols.) Vol. I.

management, necessary for the public safety and convenience. Vermont in 1855, Maine in 1858, and Ohio in 1867 followed closely the example of New Hampshire and Connecticut. Each of these state commissions, without exception, was established for the sole purpose of securing "the safety of the general public by providing a board of officials whose duty it should be to see that all railroads in the state and rolling stock are kept in suitable repair and safe for travellers."<sup>1</sup> They were merely boards established for the protection of life and limb, created after the idea of the earlier railroad laws of England.

Another movement, in contradistinction to the one just described, was going on at the same time in those same states, and in New York. There, as far back as 1850, provisions had been made for the appointment of temporary boards of commissioners, to arbitrate and settle disputes between parties, to appraise lands, to fix routes of roads, to award damages, and to adjust all such disputes as might naturally arise between parties on railroad matters. There was nothing permanent in the nature of those boards of arbitration, but as railroads increased, difficulties increased and the boards were often retained for some considerable time. Their powers were very limited and their office usually expired upon the settlement of the particular dispute or group of disputes which they came together to adjust. In this way the work was taken out of the hands of local justices and courts where strong sectional prejudices were liable to exist, that might prevent the free operation of an industrial

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<sup>1</sup>Maine Railroad Commission Report, 1884.

force, and endanger the interests of the state as a whole.

From temporary to permanent boards of arbitrators was a perfectly natural step. But, as has been shown, there already existed in several of the states permanent supervisory boards of railroad commissioners. What could be more natural than that the two functions of arbitration and supervision should be combined and exercised by one and the same commission? In 1869 this was done in and through the establishment of the Massachusetts commission.<sup>1</sup> Both ideas, namely, arbitration and supervision, were thus focused in one permanent administrative body created by the state and responsible to the state. Both ideas were consequently strengthened and greatly improved by their new setting. Here it is that one finds the real beginning of modern state railroad commissions.<sup>2</sup>

For the purposes of clearness and contrast the further developments of the commission system may best be given in a brief description of two different commissions: First, the Massachusetts commission, taken as typical of the supervisory-advisory class of commissions; and Second, the Illinois commission, taken as typical of the regulative class.

#### 1.—*Massachusetts Commission.*

The Massachusetts board established by the state legislature in 1869 is composed of three members,

<sup>1</sup>Two or three unsuccessful attempts to establish a commission had previously been made.

<sup>2</sup>The same year, 1869, that witnessed the triumph in railroad administration, witnessed also the consummation of railroad building in the completion of the Central Pacific Railroad, thus joining the Atlantic Ocean to the Pacific by an iron band.

each appointed by the governor for a term of three years, and one retiring each year. To be qualified for this office they must have no property in any railroad nor hold any office for the same, but must be capable of treating with fairness all matters that come before them. Not only were they given power to inspect the material management of the road, but the financial management as well. The law upon this point is perfectly clear:

"It shall be the duty of the board of railroad commissioners, from time to time in each year, to examine the books and accounts of all corporations operating railroads, or street railways, to see that they are kept on the plan prescribed under authority of the preceding section (§17); and statements of the doings and financial condition of the several corporations shall be prepared and published at such times as said board shall deem expedient."<sup>1</sup>

The power to inspect books and accounts did not, however, originate here. As early as 1862 and even earlier, by the general statute of Massachusetts, every corporation was required at all times to submit its books to inspection by any committee whom the legislature might choose to appoint for *that particular purpose*. A prescribed form of report was also required containing one hundred and fifty-eight different items.<sup>2</sup> Separate accounts were ordered to be kept of expenditures for construction in the different states where the roads were located; and to carry out these laws other acts were passed providing for the appointment of a temporary board of commissioners to act in conjunction with commissioners of another state, to decide what portion of the whole expenditure of a company and of its receipts and

<sup>1</sup>"Compiled Railroad Laws of Massachusetts," 1878, sec. 18; or "Railroad Law," 1876, ch. 185; or *Vide* Adams' "Railroads, their Origin and Problems," Appendix, p. 221.

<sup>2</sup>Massachusetts Railroad Returns, 1862, Appendix.

profits properly pertain to that portion of the road lying within the respective states from which the commissioners were appointed. In one case New Hampshire annulled her act and Massachusetts had to act alone.<sup>1</sup> In the case of the Boston and Maine road in 1862 the commissioners, William Stevens, commissioner for Massachusetts; W. H. Estey, for New Hampshire; and J. G. Blaine for Maine, having examined the report of the directors of the road to the legislature, affixed their signatures in approval of the same.<sup>2</sup> In 1865 the Maine commissioner did not sign the approval for some unrecorded reason.<sup>3</sup> It is clear that this system of temporary commissions worked with but limited success; and even after they became permanent in character with power to call for detailed reports they were met with a storm of opposition, the railroads even denying the right of the state to demand any such information. And for many years after reports began to be made, not only in Massachusetts but in all the states, the figures were so arranged, combined or omitted on the ground they could not be accurately obtained, that the reports were nearly worthless. The step had been taken, nevertheless, and a victory gained over the roads which has taught them to be more honest and more open in their transactions.

Thus it was only after several years of discussion and many misgivings that the Massachusetts commission came into existence with very limited powers, scarcely any, in fact, beyond those exercised by previous committees temporarily appointed,

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<sup>1</sup>Massachusetts Railroad Returns, 1862, p. 265.

<sup>2</sup>Massachusetts Railroad Returns, 1862, p. 28.

<sup>3</sup>Massachusetts Railroad Returns, 1862, p. 23.



and by the commissions of other states.<sup>1</sup> In this commission these powers were combined, then strengthened, and enlarged.

In their first annual report the commissioners expressed themselves upon the gravity of their undertaking. They succeeded in mapping out a policy which secured the support of the people and established the confidence of both the people and the roads. They excused themselves from entering into any discussion, at the time, of the questions involved in the law, owing, they state, to

“the brief time we have had to pursue our investigations, the immense and conflicting interests involved, the necessity of falling into the fewest possible errors, and the utter futility of any legislation which partakes rather of the nature of force than of an educated and reflecting public opinion. . . . Any solution of the question arising out of the intricate relations of the community and the railroad corporations requires time and study, and a hasty or ill-considered solution is worse than none at all. The problem needs but to be stated to have the difficulties surrounding it appreciated. . . . No system which could possibly be proposed at this time would be based upon a correct understanding of these complicated considerations, or could command any general respect or stand the test of criticism. Such a work must be the last result, rather than the beginning of the labors of a commission.”<sup>2</sup>

Such was the feeling and belief with which the earliest commission undertook its work, and this same degree of caution and discretion has ever since been maintained by that commission. Under the efficient leadership of Charles Francis Adams, Jr., the success of the new commission was assured. It set to work to study the various systems of control in Europe. In the same report above quoted, filled with the Belgian scheme of both public and private

<sup>1</sup>C. F. Adams's Testimony before Senate Committee, 1885, p. 1202.

<sup>2</sup>Massachusetts Railroad Commission Report, First Annual, p. 42  
*t seq.*

ownership of railroads explained by M. Fassiaux, it went so far as to recommend to the legislature the purchase of the Fitchburg line, fifty-one miles, wholly in Massachusetts, to try the experiment. The commissioners urged this as the solution of the railroad problem which they were compelled to face, and gave it as their firm belief that partial state ownership would remedy all the evils which then existed, and would prove a panacea for all railroad ills in future. The state itself took great interest in this system.<sup>1</sup> The argument in the mind of the commission was that the state could make its own standard of services on roads owned by the people, and force the roads owned by private persons to conform to it by competition. The conclusion was soon reached, however, that under our form of government the policy of state ownership and management, even in part, would be utterly impracticable; politics playing so large a part in all departments of government. Such a policy would subject the country to special dangers too great to warrant even an experiment.

Until 1870 the roads made their reports to the secretary of the commonwealth, but in that year the method was changed by statute, and thereafter they reported annually to the commissioners, who were authorized to change and make additions to forms of returns as they deemed expedient. In preparing their new form, two things were aimed at: First, greater detail in the returns, and second, a more uniform system of accounts which would secure accuracy and completeness. In 1870 it was resolved that the commission should "prepare a codification of all the general laws of the state relating to rail-

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<sup>1</sup>Testimony, Senate Select Committee, p. 10.

roads and railroad corporations," and at the close of the year 1871 the commission recommended to the legislature that "the general laws as they now stand shall be embodied into one act and all previous legislation be repealed." This was done<sup>1</sup> and a large number of obsolete laws were swept from the statute books. The statutes dealing with the founding of the commission, and late additions thereto, fix the duties of the board summarily as follows:

1.—To examine whether the corporations are living up to the terms of their charters and the provisions of the law, and to report all violations of contracts, public rights, and duties on the part of the railroads. The board has power to alter, amend, or reject charters at its discretion with one exception, as to the Boston and Lowell corporation.

2.—To care for the safety and accommodation of the public. This idea was borrowed from the earlier commissions of the United States and England.

3.—To summon witnesses, and examine them under oath, when a controversy arises between parties. The board appoints a day and place for hearing complaints, and both sides are supposed to appear, although it often happens that the question in dispute has been settled before the parties come before the board.

4.—To inspect books and accounts of corporations. These must be kept in a uniform manner as prescribed by the board. Upon these matters the commission has positive power, and the courts uphold and enforce its decisions.

5.—To act as a board of arbitration, settling all matters of dispute between railroad companies and

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<sup>1</sup>Massachusetts General Railroad Act of 1874.

the public, and giving attention to all complaints and petitions. Appeals are to be taken to the attorney general, who decides whether or not the state shall take action in cases where the railroads fail to comply with the board's directions.

6.—To report annually to the legislature, and to recommend new or altered legislation. This is one of the commission's most important functions and has been copied by other states.

According to the statute, if twenty citizens of a town apply to the selectmen, or to the city government, and state any grievance or complaint against a railroad, the selectmen or city government shall either investigate the matter, or petition the board, or give a reason why they do not. The board is given the same power on its own motion to examine into grievances and to advise the corporation to amend if in the opinion of the board the grievance is sustained. As a matter of fact, the companies have in almost every case complied with the demands of the board.

Public opinion is chiefly relied upon for the enforcement of the recommendations of the commission, and the public press is called on to aid in keeping the attention of the people upon the railroad management.<sup>1</sup> Thus the Massachusetts commission finds itself in direct communication with the legislature on the one hand and the people on the other, and this adds greatly to its efficiency. It has no power to enforce its orders, but it has a reserved power of appeal to the legislature, which stands ever ready to carry out the board's recommendations.<sup>2</sup> This feature

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<sup>1</sup>Testimony, Senate Committee, 1885, p. 501.

<sup>2</sup>*Idem* p. 310.

has proved to be a great check upon mismanagement.

The results attained by this commission are clearly marked. It has held the railroads in close obedience to the laws; it has corrected abuses, settled grievances, secured the passage of wise laws and prevented those that seemed unwise. It has secured uniformity in accounts and reports of the roads and has established confidence and a friendly feeling between the people and the railroads as common carriers.

Its functions, defined as supervisory, advisory and recommendatory, have been reproduced in most of the state commissions established since 1869. These functions were found entirely sufficient for the satisfactory management and control of the roads in Massachusetts and most of the eastern states, but increased power and wider duties, and mandatory enforcement were required to satisfy the demands of a hostile public sentiment in the western commonwealths.

## *2.—Illinois Commission.*

In strong contrast to the Massachusetts commission, in growth and development, stands the Illinois commission, which may be taken as the type of all those commissions that may be termed regulative in function and character—not that the idea of regulation supplants that of supervision and recommendation as embodied in the Massachusetts commission, but that regulation and enforcement are functions exercised by the Illinois commission in addition to supervision and advice. The former supersedes the latter, giving color and character to the commission.

By the constitution of Illinois, adopted in 1870, railroads were declared to be public highways and subject to the rules and regulations prescribed by law. It was made mandatory on the general assembly to prevent extortion and unjust discrimination; to establish by law reasonable maximum rates of charges for both passengers and freight; to correct abuses, to enforce the laws by prescribed penalties; and to regulate and control, by appropriate means, the transportation of freight and passengers by the railroads of the state. Accordingly the general assembly, in April 1871, passed an act creating the Railroad and Warehouse Commission, composed of three commissioners to be appointed by the governor for the term of two years, subject to removal at his discretion. The law took effect in July, and the commission was organized to administer the law under the authority of the legislature, which in turn found its authority in the constitution itself. Nothing could be gained from the experience of the Massachusetts commission, so recent was its establishment, nor, indeed, were the needs of the two commonwealths at that time the same. The first commission was established in a thickly settled and limited area, the second in a thinly settled and seemingly limitless area; the one in a conservative and steady society, the other in a liberal, excited and new society. There being a distinct difference between the two localities, a distinct public policy for controlling the railroads was called for. The Illinois commission had to begin *de novo* and lay deep the foundation of the principle of regulation by the state. Care, however, had to be exercised that no false steps should be taken which would defeat the ends it sought to

attain. As a result, but little that was done has since had to be undone.

The duties of this commission were largely connected with the inspection and storage of grain. Chicago, at that time, was the granary and market for nearly all the grain produced throughout the Mississippi valley. Consequently the duty of inspecting this grain was by no means light or unimportant. In addition, the commission had oversight of the railroads. Its powers and duties with respect to this department of its work may be summarized as follows:

1.—To prescribe the form of reports which the roads were required to make to the commission annually. The commission itself was required to report to the governor on December 1 of each year.

2.—To examine into the condition and management of the roads for the security and accommodation of the public.

3.—To examine books and accounts and to examine officials under oath.

4.—To examine witnesses under oath and compel their attendance by the aid of the circuit court; the statute fixing the penalty of from twenty-five to five hundred dollars, or thirty days imprisonment, or both, for refusal.

5.—To prosecute all violations of the statute that were brought to its attention.

6.—To make schedules of reasonable maximum rate of charges for the transportation of freight and passengers for each road doing business in the state.<sup>1</sup> This duty was added by the law of 1873.

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<sup>1</sup>In 1881 the roads were divided into two groups with but two schedules. *Vide* Senate Committee Report, 1885, p. 72.

7.—In 1873 also the commission was empowered to institute proceedings whenever, in its opinion, the facts in any complaint warrant it.<sup>1</sup> The state's attorneys of the respective counties and the attorney general are required to prosecute all suits brought by the commissioners in their name, and as they direct.

The same year (1873) the legislature passed an act, in the nature of an amendment to the law of 1871,<sup>2</sup> "to prevent extortion and unjust discrimination in the rates charged for transportation of passengers and freight and cars on the railroads in this state, and to furnish the same and prescribe a mode of procedure and the rules of evidence relating thereto," etc.<sup>3</sup>

Under this act the powers of the board were also strengthened and its duties increased. The findings of the commission were made *prima facie* evidence of the facts found, and the schedules of rates made by the board were declared to be *prima facie* reasonable.<sup>4</sup>

The burden of proof was shifted upon the railroad to prove, in case it charged a rate in excess of the commissioners' rate, that the rate charged was reasonable, and not upon the people to prove that it was unreasonable.

This method of procedure was directly the opposite of the common law practice. It was a new departure in railroad legislation and has since been adopted in other states. The act further provided for the public prosecution of violations of the laws. The reason for this was clear. For a long time the

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<sup>1</sup>Correspondence of Secretary of Illinois Commission, July, 1890.

<sup>2</sup>Testimony, Senate Committee, 1885, p. 732.

<sup>3</sup>Illinois Report, Sixth Annual.

<sup>4</sup>Illinois Report, Sixth Annual, p. 18.



railroad companies had used every means in their power to delay justice and to heap up the expense against the plaintiff, to render the victory a barren one should the plaintiff win, and, more than all, to deter and discourage others from like proceedings. The result was that parties aggrieved preferred to bear the ills they had, deeming it more profitable, to themselves at least, to let the roads alone, than fly to other ills they knew not of. Notice the testimony of Mr. Warner, secretary of the Minnesota commission in 1885, before the senate committee:

MR. WARNER: . . . There was no way under the old law<sup>2</sup> whereby he (the commissioner) could bring a suit. . . . But he could simply refer the parties to a way in which they might proceed. The trouble was that the parties could not hold an action against the railroad companies.

THE CHAIRMAN: They were left to their own resources after the commissioners found out what the trouble was?

MR. WARNER: Yes, sir.

SENATOR HARRIS: As a general rule, or invariably, the citizen concluded that he could not afford to litigate with the railroad company?

MR. WARNER: Yes, sir. Sometimes he would write back and think that the commissioner did not amount to much, and we had better have something else.

SENATOR HARRIS: But, as a matter fact, did the parties generally sue, or did any of them sue?

MR. WARNER: I know of but two suits; both of those parties won. I have a letter on file now from a man up on the Northern Pacific. The expense of litigation was, I think, *three times* what he gained from the company.

The same condition of affairs was true in the other western states, and in Illinois in particular. Matters had come to such a pass that only sturdy and forcible methods, such as were adopted in Illinois, could have "allayed the gathering storm of indignation" which such abuses and tyranny had aroused. The

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<sup>1</sup>Testimony, Senate Committee, 1885, p. 1354.

<sup>2</sup>The Railroad Law of 1874.

railroads resisted every effort of the commission to execute the new law until the question which had been raised concerning the constitutionality of the law was judicially determined by the Federal Supreme Court. And when the Supreme Court affirmed the right of the commission to fix rates<sup>1</sup> the railroads acquiesced unwillingly at first, but gradually moderated their tone and manner, and assumed a radically different attitude toward both the community and the commission.

It was while awaiting the determination of its authority by the Supreme Court that the commission of 1877 put the Massachusetts principle of arbitration in practice. Although there was no such power granted to it by law, yet, by an implied power, the commissioners constituted themselves, upon their own motion, a board of arbitration to hear complaints. This proved timely and very satisfactory, as the numerous cases submitted to them received speedy adjustment.

For the year ending June 30, 1880, there were forty-seven formal complaints brought before the commission, of which twenty-five were of extortion, thirteen of unjust discrimination, six of both, and three for other reasons. All of these were settled by the commission. Where the railroads were decided against they promptly responded to the decision of the commission. Such was the effect of the decision of the United States Supreme Court which this same year affirmed the right of the legislature of a state to regulate rates of freight and fare by means of its commission.

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<sup>1</sup>C. B. & Q. R. R. vs. Iowa, 94 U. S., p. 155.

In 1884 the number of cases had been reduced to three, each of which concerned the question of unjust discrimination. There is no record of any complaint either of extortion or unjust discrimination in 1885. But the peace was short, the railroads having found a new argument by which the power of the commission might be neutralized. The bulk of the traffic was interstate, and the question was raised whether the state had the right to regulate it in the absence of federal legislation. When a test case<sup>1</sup> was brought before the federal court<sup>2</sup> it was decided that "it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a state, which attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the states, is a valid law." The railroads thus found themselves again practically free, and hurled defiance at the commissions. The latter found themselves checkmated by the Constitution itself, and until Congress, which alone had the power, should act, the abuses must be allowed to continue. The year 1887, however, brought to the people, not only of Illinois, but of the whole country, the much needed relief in the form of a national commission.

We may now ask, what are the results which the Illinois commission has accomplished? They are quite obvious. It has been largely instrumental in effecting a reduction in rates throughout the state, especially at non-competing points, where its benefits are most clearly seen. It has brought the railroads

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<sup>1</sup> *Wabash, etc., R. R. Co. vs. Illinois*, 118 U. S., 557.

<sup>2</sup> The Chief Justice and Justices Bradley and Gray dissented. Justice Miller rendered the opinion for the majority.

to a better understanding with the people; and a sounder spirit exists between them, as a result of which the state is enjoying a period of uninterrupted prosperity, free from the turmoil of hostile litigation.

While no state has gone further in the regulation and control of the railroads, with the possible exception of Iowa, yet her roads have been among the most prosperous; their stock is quoted with the highest upon the market, and the service they render is not excelled in this country. But for all this the system is not to be considered perfect. The commission itself is well aware that the law in some of its provisions is too inflexible and adapts itself to the interests of the commonwealth as a whole too roughly, at times, leaving too little discretion to be exercised by the board. However, as time goes on, through expansion and tentative legislation, these faults will be eliminated.

Thus we have the Illinois system of regulation contrasted with the Massachusetts system of supervision and recommendation.<sup>1</sup> The former has been followed by most of the states of the West and South, the latter by the states of the East.

The commission system has ceased to be an experiment, and has now become an accepted agency of administration and a permanent feature in our government. The fact that there are thirty states in which commissions are established is sufficient proof that the best thought of the country has decided in favor of this system as the most efficient instrument of regulation. These thirty commissions are patterned after one or the other types described above. In two other states the system has been tried and is

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<sup>1</sup> *Vide* Appendix A for fullness of detail.

now abandoned. During the past year the states of Texas and North Carolina and the territory of Arizona have established commissions; the Colorado commission has been re-established, and the commission of Florida abolished. The remaining states and territories have thus far taken no steps toward the regulation of the railroads within their borders. The various characteristics, special and effective features of the commissions in the United States, as well as the discussion of their weaknesses and defects, belong more properly to the second part of this paper. A single point remains to be noticed here: That the present commission system, in its generic sense, has been brought about by a growth both gradual and steady, and not by chance, or, as one author declared, by a "happy guess."<sup>1</sup> It has arisen and been developed not by the assumption of power, but by the accumulation of it; not from theory but from necessity; not because wanted by any particular industrial class or section, but because needed and demanded by the whole social, political, and industrial order of society of the entire nation. Nor has it maintained itself without a struggle. The results which it has already attained bespeak for it a brighter future. Who can estimate its possibilities!

### 3.—*Interstate Commission.*

Returning to the history of the Illinois commission, it will be remembered that, on account of the interstate character of the larger part of the traffic, the commissions found themselves again powerless to prevent the evils that prevailed, and that relief came in 1887, once more restoring confidence, order and

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<sup>1</sup>Testimony, Senate Select Committee, 1885, p. 1202.

obedience to the laws. How this was brought about demands attention before closing this part of the paper.

Previous to 1887 Congress had been silent upon the regulation of the railroads as far as the passing of any laws was concerned. The only acts to its credit were,<sup>1</sup> one in 1866 authorizing railroads to carry passengers and freight from one state to another or through several states, to secure compensation for the same, and to connect with other roads so as to form continuous lines; and another in 1873 prohibiting interstate lines or vessels, engaged in the transportation of stock from state to state from confining the same in cars, boats, or otherwise for more than twenty-eight hours consecutively without unloading for purposes of food and rest for five consecutive hours. Ever since the Granger agitation in the West, however, the matter of regulation had constantly been before Congress. The House passed bills on the subject and so did the Senate, but any agreement on the matter seemed to be beyond reach.

At length, on the one hand, in view of the various forms of discrimination<sup>2</sup> and other evil practices; in view of the differing opinions of the highest tribunal upon the questions of state and federal powers in the absence of positive congressional legislation;<sup>3</sup> in

<sup>1</sup>Senate Committee, Report, p. 38.

<sup>2</sup>*Idem* Dabney: "Public Regulation of Railways," p. 226. Also *In re* C. St. P. & K. C. R. R. Co. "Second Annual Report of Interstate Commerce Commission."

<sup>3</sup>Cases: *Chicago, Burlington & Quincy vs. Iowa* (94 U. S. 155); *Peik vs. Chicago & Northwestern Railway Co.* (94 U. S. 164); *Railroad Co. vs. Hannan* (94 U. S. 485.); *Hall vs. De Cuir* (95 U. S. 465); *Wm. Kaiser vs. Illinois Central Railway Co.*; *Carton & Co. vs. Illinois Central Railway Co.* (59 Iowa 151); *People of Illinois vs. Wabash, St. L. & P. Ry. Co.* Opinion by Justice Miller. Also, "Constitutional

view of the inability of state commissions to right the wrongs everywhere existing; and on the other hand, in view of the comparative efficiency of state commissions to deal with certain classes of cases and certain forms of regulation and inspection within their own jurisdiction; and finally, urged by the pressure of public sentiment, national in extent, for congressional action to complement state legislation and state administration—"Congress did act."

In the fall of 1884 Congress set about drawing up proposals for legislation. The House in 1884-1885 passed the Reagan Bill, introduced in 1878, but the Senate rejected it, substituting in its place a more moderate bill. The House failed to agree to this and nothing was accomplished. A conference was then asked for, and a temporary agreement was reached by appointing a committee of investigation which was to report upon the subject of the regulation of transportation of freight and passengers between the several states. The president of the Senate on March 21, 1885, appointed as a committee, Senators Cullom (chairman), Miller, Platt, Gorman, and Harris, in accordance with the resolution passed by the Senate on the 17th.<sup>1</sup> This committee held its first session for the taking of testimony in New York city, May 10, 1885. Previously a circular<sup>2</sup> containing fifteen questions had been sent out over the entire country to attract the attention of the people to the subject and to secure the best ideas and opinions possible on the matter in hand.

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Limitations," by Judge Cooley, p. 183. Additional Cases cited: Pensacola Tel. Co. vs. Western Union Tel. Co. (96 U. S. Rept.); Insurance Co. vs. Morse (20 Wal. 445); Brown vs. Houston (114 U. S. 622).

<sup>1</sup>Testimony, Senate Committee, p. 1.

<sup>2</sup>Testimony, Senate Committee p. 2.

Mr. John D. Kernan, chairman of the New York railroad commission, was the first person called upon to state his views. Other members of the commission, prominent business men and able lawyers, followed. From New York the committee removed its investigation to Boston, then to Philadelphia, Chicago and other western cities; taking testimony from railroad commissioners, business men, farmers, shippers, lawyers and officials of various organizations. Testimony was received from such men as Simon Sterne, Albert Fink, A. T. Hadley, George R. Blanchard, Edward Atkinson, H. V. Poor, Marshall Field, and a host of others whose names represent the best economic thought of the country on both sides of the question. Whenever personal visitation was impossible or impracticable a voluminous correspondence secured the opinions desired. After taking 1456 pages of testimony and 247 pages of reported correspondence, and after a thorough study of state constitutions, railroad laws and statutes, the committee submitted its report in accordance with a resolution made in the Senate on the second Monday of December, 1885. The paramount question before the first session of the Forty-ninth Congress was not whether or no any legislation should be enacted, for it was evident that something must be done; but what should be the scope of the legislation proposed and the best method by which it could be administered. Senator Cullom in one of his public utterances about that time said:<sup>1</sup>

"It may not be inappropriate to say a few words about the cheering prospect for securing the enactment of national legislation upon this subject at the approaching session of Congress. . . . ."

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<sup>1</sup>Iowa Railroad Commission Report, 1886, p. 46.



. . . Knowing the justice of the popular demand for some legislation on the subject, my chief anxiety has been to secure the enactment of some law that would make a beginning in placing some restrictions upon the conduct of railroad corporations in their dealings with the public, whether all its provisions fully met my approval or not. I rejoice in the belief that the members of the conference committee soon to meet will come together with an earnest determination to secure the enactment of such a measure as will commend itself in its main features to their best judgment."

It was a time which called for calm judgment and wise statesmanship. No Congress since the Constitution was adopted had had a greater industrial question to solve. The results of the work of the Senate committee were crystalized in the Interstate Commerce Bill which passed the House on January 21, 1887, by a sweeping vote of two hundred and nineteen to forty-one. It had passed the Senate the previous week, January 14, by a vote of forty-five to fifteen. Scarcely any opposition was shown; what there was came mainly from the Pacific slope and from the bond-holding and stock-holding sections around New York, Boston and Philadelphia. The heavy majority for the bill attested the strength of the demand in all sections of the country. President Cleveland signed the bill February 4, 1887, and it took effect sixty days after its passage. The names of the national commissioners and their functions are too well known to require mention here. The effect of the act during the first six months may be shown by quoting from Judge Cooley's address before the Boston Merchants' Association.<sup>1</sup> He said:<sup>2</sup>

"There were indeed some objections made to it (Interstate Commerce Act) immediately after its passage as well as before, but when it was given effect it was found, quite to the surprise of some who had prophesied disaster to the railroads from it that the disaster did

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<sup>1</sup> January 8, 1889.

<sup>2</sup> *Vide* Address, p. 4.

not follow. Indeed, for six months or more after the act took effect it was generally conceded it helped the railroads instead of harming them. They gained in revenue from the anti-discriminating clauses more than they lost from the prohibition of the greater charges upon the shorter haul. Everyone ought to have been gratified with this, because the gain to the roads was not at the expense of the general public; it was, on the other hand, to their advantage, because it was a gain resulting principally from taking away unfair advantages which before were benefitting favored persons at the expense of others upon whom the burden was proportionally increased."

And again he says: "The period during which the law operated most to the benefit of the railroads was precisely that during which its provisions were best observed."

The railroads found the law by no means so formidable as they had imagined it would be; in fact, not formidable at all, but helpful. However, discrimination did not wholly cease, nor were all the diseases in the body of commerce cured as the most sanguine promoters of the law had anticipated. As rapidly as one method of evading the law was stopped, another was found to exist quite as dangerous as the first. Secret rebates, underbilling and other devices came into play after the act was passed. Amendments to the law<sup>1</sup> and the rulings of the commission from time to time have declared against these, and yet it is well known that many evils in number and kind still exist. What does it indicate? It indicates two things: First, an inefficiency in the law itself; and second, the fact that there are other sources of trouble that have never been attacked by reformers nor stopped by legislation. The interstate law lacks power—"reformatory power." "One who investigates railroad dis-

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<sup>1</sup>March 2, 1889. *Vide* Appendix 13: "Third Annual Report of Interstate Commerce Commission," 1889.

orders," says Judge Cooley, "will be surprised to find how many of them, though plainly opposed to the spirit of the law, may still be practiced legally." Little by little, year by year, the spirit of the act is being crystalized into definite prohibitory clauses, and increased powers are being bestowed upon the commission. The tendency, as observed from the third annual report (1889), is to bring all the disturbing influences which at present check the free operation of the law more and more under its jurisdiction. Some of these disturbing forces are: Local roads doing occasional interstate business, though claiming to be state roads; express companies, water means of transportation, and scalper business.

Thus it is necessary to recognize the fact that the work of regulating the transportation industry in the United States is not yet complete. The commission system has not yet attained its full possibilities. A wide field exists in which to exercise its potential powers and test its ability and strength. The end and aim of the commission system of regulation, both state and national, and the interdependence of both are yet to be wrought out—as the present success has been—by gradual changes, tentative measures, steady growth toward uniformity, harmony and coöperation. Its history, however, proves its permanency, and it is safe to conclude that regulation by commission is a sound policy, requiring expansion to secure perfection.

We have traced the development of railway regulation through its three historical and logical stages. The first we have seen to be marked by freedom from interference; the second was a period of general

laws and statutes, and competition was relied on as the sole regulator of railroad disorders; the third is the period of state interference, state and interstate commissions having been established to administer the laws. It is hoped that within this last decade of the nineteenth century a fourth period may be added which will be marked by the coöperation of state and national commissions.

The movement has already begun. In the succeeding part of this paper we shall discuss the necessity of such a step and how through its means efficiency in railroad regulation and management may be secured.

## II.

### THE STEPS NECESSARY TO SECURE GREATER EFFICIENCY.

In the preceding historical sketch we have surveyed the growth and development of railroad regulation and control in the United States from its beginnings down to the present time. We have observed how the two principles of arbitration and supervision combined for the first time in the Massachusetts system, have been developed in the various state railroad commissions in general throughout the country; and, in addition to these principles, we have seen the principle of regulation engrafted into the commissions of the West, as exemplified in the Illinois commission in particular. We have also sketched the growing power of the railroads themselves, and have marked the steady increase in public sentiment for controlling them, until it became

crystalized in a national railroad commission patterned after what was best in the state commissions and created complementary thereto. And finally, from the observation of these historical facts, the conclusion was reached that in the commission system we find, for the present at least, the true policy of regulation of the railroad industry; that it is a permanent feature of our administrative machinery; and that, if perfected, it would effectively meet the present needs and adapt itself to the future wants of our rapidly developing industrial society.

It remains now to consider in what ways the commission system may be perfected and to propose a plan of coördinated action by the various state commissions in conjunction with the interstate commission, whereby greater efficiency in railroad regulation and control may be secured. In order to bring the discussion plainly before us, two questions are proposed, namely:

1. How are state commissions to be rendered more effective?

2. How may the coöperation of state and national commissions be most beneficially realized?

The first step has to do with the construction of the commissions themselves; the second with their relation to one another. In the first the matter of uniformity is desirable rather than essential; in the second it is both desirable and essential.

#### *A. How are State Commissions to be Rendered More Effective?*

The good results and lasting benefits of state commissions are manifest, and from their reports it would seem that the highest possible success has been well-

nigh attained. But, as we have previously shown, the goal of success has not been reached. Even if it were to be assumed that the present commissions were sufficiently effective at the time they were created, it does not necessarily follow that they are effective now. Some of the greatest changes of the past fifteen years have been manifested in the railroad industry. So great and far-reaching has been their influence that they are equivalent, in their effects, to a revolution. While new methods and machinery are required to carry on the mechanical management of the industry, so likewise is more effective machinery needed in the government to regulate and control the industry.

The commission system in its present state, handed down from a past near in time but remote in means and methods, is utterly inefficient and unable to meet the needs of the expanded trade and commerce of to-day. We have convincing evidence of this in the fact that destructive rate wars frequently occur, extending through a long period of time and covering a vast territory; that complaints pour in by the hundred to some of our state commissions and to the interstate commission; that these complaints are increasing so rapidly that already the commissions as well as the courts are burdened with overwork; that secrecy, double dealing and many other evil practices flourish so luxuriantly in the railroad industry; and that a sort of smothered jealousy and ungovernable fear run through society toward the great railroad corporations.

In view of this condition of affairs two things are evident. First, we lack machinery to carry out the laws; and second, we lack power and force behind

the machinery to make it do its work or, in other words, there is a lack of power to enforce the laws. It would seem that there were laws enough, but a law is good for nothing unless it is enforced. The confession is plainly and frankly made by the Culom committee in their report, page 40, that—

“If the law as it now stands, and as it has over and over again been interpreted by the courts, in relation to the legal status and duties of railroads towards the public, were enforced, there would be no occasion for either the states or the national government to take any action with a view to the regulation of commerce, either state or interstate. But the law is not enforced. . . . and the experience of all states and nations where railroads have been built shows that the people cannot with safety rely upon the ordinary common law remedies to protect them against unjust discrimination and extortion.”<sup>1</sup>

The machinery in the form of commissions, created by a large number of the states of the Union for the purpose of administering the laws in respect to the railroads is not effective. If it were, repeated violations of the law would become less frequent. That it is not effective is due in part to the construction of commissions themselves, more largely perhaps to the need of power, and behind the power a strong public sentiment on the part of the people. It is also largely due, as will be shown, to the lack of harmony and uniformity; wherein lie the real elements of strength and efficiency; elements which are necessary, not only for the good of the people, but also for the best interests of the railroads, and for the social development and industrial progress of the nation.

1. A careful study of the tables presented as an appendix to this paper will be found instructive and

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<sup>1</sup>Report of Senate Select Committee on Interstate Commerce, January 18, 1886.

convincing. The first characteristic that will be noticed is the great lack of uniformity in much of the data exhibited; but after careful observation sufficient uniformity will be found to serve as an encouragement for more determined efforts on the part of the various states toward the same end. From the first observation we hope to make it clear that there is room for and need of reform; from the the second we deduce an argument in favor of a more general establishment of the principle of uniformity, and we hope to show that it can be secured easily by means of periodical conferences of railroad commissioners.

That the differences in the state commission laws may be made more apparent, the disastrous consequences of such loose legislation more fully appreciated, and the necessity for reform urged, let us examine the tables somewhat in detail.

It is to be noticed<sup>1</sup> that thirty-four of the states of the American Union have established and still maintain railroad commissions of one kind or another. In four of these states, namely—Pennsylvania, Arkansas, New Jersey and Indiana—the commission is composed simply of state officers, whose duty it is, in Pennsylvania, to collect statistics respecting railroads; in New Jersey and Indiana, to assess railroad property for the purpose of taxation; and to perform both functions in Arkansas. In two other states, not included in the enumeration just made, commissions have existed until recently. Florida and Tennessee are the only states in the entire history of commissions in which the system has been tried and is now abandoned. In these cases it must

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<sup>1</sup> *Vide* Appendix. Table I.



be said, the system was abandoned rather on account of certain technicalities in the law and the indisposition or political treachery of the legislature than on account of the lack of confidence in the commission system itself. These thirty-four state commissions are divided into three groups according to their powers and duties. The division is made mainly upon the power to fix rates, although it is extremely difficult, if indeed possible, to draw a distinct line upon any such absolute basis. The points observed are: the power to make classifications; the power to institute proceedings to enforce decisions; whether or not rates are limited by statute; and, whether or not the prescribed or implied powers have been exercised.

The order in which the groups appear has been chosen on the basis of the period of their establishment, for general convenience in making up the tables, and for the purposes of comparison.

The first group contains those commissions whose duties are supervisory, and whose powers are advisory. The Massachusetts commission serves best as the type because it includes most of the features of this group and stands first in point of establishment among recent commissions.<sup>1</sup> The states with commissions belonging to this group are, Massachusetts, Connecticut, Vermont, Maine, New York, Ohio, Rhode Island, Michigan, Wisconsin, Virginia, Kentucky, Arizona and Colorado, making a total of thirteen.

The second group contains those commissions whose powers, in addition to those exercised by the commissions of the first group, are in a greater or less degree regulative in character. To this group belong

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<sup>1</sup> *Vide* Part I, p. 25.

the commissions of Illinois,<sup>1</sup> Iowa, Minnesota, Kansas, Missouri, California, Alabama, Georgia, South Carolina, Mississippi, New Hampshire, North Dakota, South Dakota, Oregon, Nebraska, Texas and North Carolina, making a total of seventeen.

The third group comprises the commissions of Arkansas, Pennsylvania, New Jersey and Indiana, making a total of four. This group has been formed more especially for completeness than for the purpose of deriving from its data any governing principle that would effect the changes hereinafter proposed.

A fourth group has been added also for completeness. It comprises, in addition to the two states whose commissions have been abolished, the remaining nine states and four territories, exclusive of Alaska, that have never adopted the commission system in any form, and that have only a few brief, meagre and worthless laws relating to the management of the railroads.

Not only do the tables, as a whole, reveal the great lack of uniformity, but the same fact will be disclosed by a closer study of each particular group. Though classified according to some leading function or power, each commission differs in a greater or less degree from every other in the same group with itself.<sup>2</sup> This dissimilarity is due to the fact that commissions, created by laws taken verbatim

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<sup>1</sup>Serves as the type of the second group for the same reason as Massachusetts of the first.

<sup>2</sup>The difficulty of making a perfectly accurate classification from such a heterogeneous collection of functions, duties and laws is apparent in the nature of the case. Attention is called to the fact, however, in support of the argument for greater homogeneity and uniformity.

from the statute books of another state, have been granted additional powers, their times increased or perhaps decreased, or their powers misused have rendered them partially paralyzed or entirely worthless instruments of administration: so that they appear to-day to differ in some instances almost to the degree of principle itself, although existing side by side in adjoining states and attempting to regulate the same traffic and to exercise their powers towards the same railroad or group of railroads.

In the matter of construction, with which the first table deals, notice the differences, as shown by the data, in the number of persons constituting the commission in the various states. In Rhode Island, Ohio, Michigan and four other states one is the number, while in most of the states it is three. The number is not made to depend, in any case, upon the necessity for such officers nor upon the amount of work to be done, else Ohio would demand three, Vermont, one; the Ohio commissioner having to inspect and report upon 7,797.15 miles of road or 4.44 per cent. of the total mileage, and the Vermont commission, composed of three men, on 1,612.54 miles or .64 per cent. of the total mileage; nor is the number of commissioners made to depend upon the number of square miles of territory per mile of line, else Michigan would have three and Massachusetts one, since Michigan has 58,915 square miles of territory and Massachusetts 8,315, while Michigan has 6,783.59 and Massachusetts 2,621.76 miles of road, or in the ratio of eight and sixty-nine hundredths square miles to one square mile of road in Michigan, and

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Second Annual Report of Interstate Commerce Commission's Statistical Bureau 1889 p. 11.

four and one hundreth to a mile of road in Massachusetts.

Similarly it can be shown that the number is not according to population, density of traffic nor, indeed, according to any principle whatsoever, but simply according to the fancy of the framers of the law and seemingly without any regard to the greatness of the interests involved.

In choosing the railroad commission it is customary in a majority of the states for the governor to appoint and the senate to confirm. In some states: Iowa, Missouri, and in those states whose commissioners are purely state officers, it is left with the people to elect the commission by popular vote; while in Kansas the state officers select the board, and in Nebraska the secretary of state, attorney general and the auditor appoint one secretary each and the three secretaries constitute the board of transportation. In Virginia the general assembly chooses the commissioner; in Wisconsin the people elect one. Illinois and Georgia may boast of their uniformity in commission legislation, but the Illinois commissioners may be removed at the discretion of the governor, while in Georgia the governor can only suspend; removal must take place by a majority vote of each branch of the legislature. In California the commissioners are elected one from each of the three districts into which the state is divided; in South Carolina they are chosen by the governor from specified districts; and in Mississippi the legislature chooses one from each supreme court district.

Observe also the data respecting the terms of office. These vary from two years in Vermont to six years in South Carolina and Georgia. In about one-half of

the states the term of office is two years; in Iowa it is three; in Alabama four; in New York five; in Missouri six. Among the states of the first group alone one finds Ohio with one commissioner for two years; Rhode Island, one commissioner for three years; Vermont, three for two years; Massachusetts, three for three years; Connecticut, three for four years; and New York, three for five years.<sup>1</sup>

In some of the states the commissioners are turned adrift together, in others one retires each year or every two years as the case may be, subject, to be sure, to reappointment or reelection; but in any event disturbing the harmony and impairing or destroying the solidarity of the commission itself.<sup>2</sup>

Let the question here be raised: What could such commissions do under a system of coöperation, where the success of the state depends so much upon the efficiency and experience of its railroad commissioners?

These various commissioners draw salaries ranging from \$500 to \$8,000. These salaries are fixed neither according to the amount of responsibility nor the amount of work really done, nor according to any marked and superior ability in the men themselves. In Rhode Island the governor appoints one commissioner at \$500 per year; in Ohio the governor appoints one at \$2,000 per year; in New York the governor appoints three commissioners at \$8,000<sup>3</sup> per year each, for the term of five years; in Georgia the governor appoints three at \$2,500 per year for six years. In

<sup>1</sup> *Vide* Appendix. Table I.

<sup>2</sup> *Vide* C. F. Adams's "Railroads, their Origin and Problems." Note p. 134.

<sup>3</sup> This is the highest salary paid any state officer, except the governor, in New York.

California the people elect three at \$4,000 per year for four years; and in Missouri the people elect three at \$3,000 per year for six years. In Massachusetts the president of the commission receives a salary of \$4,000, the associates \$3,500 each; in Alabama the president receives \$3,500, the associates \$3,000 each; in New Hampshire the president and his associates receive respectively \$2,500, and \$2,000 per year. In Vermont the salary is fixed at eight dollars per day for working days; in Maine until recently the compensation received by the commission was five dollars per day each; it is now changed to \$2,000 per year for each member. In states where the state officers personally act in the capacity of commissioners, so far as we are informed, no additional compensation is allowed. In Nebraska the secretaries, appointed by the state officers, receive \$2,000 per year each. The secretary of the New York commission receives a larger salary than the chairman of the Georgia commission receives, and as large as that of the chairman of the Iowa commission, although the latter position involves more labor than the same office in any other state railroad commission in this country. The amount of labor done by the Iowa commission can be compared only with that done by the interstate commission, as statistics will show.<sup>1</sup> The commissioners of Iowa receive \$3,000 per year each, a little more than one-third the amount received by the New York commissioners, and less than half the sum received by the members of the interstate commission.

In most of the states the salaries are paid by the state itself, but the old idea is still common<sup>2</sup> of sad-

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<sup>1</sup> *Vide* Appendix. Table V.

<sup>2</sup> Especially in New England.

dling the expense on the railroads as a special tax in proportion to gross receipts, as in Maine; per mile, as in Connecticut; or according to net receipts, as in New Hampshire. Kansas is the only one of the western states that follows the older idea of assessing the railroads pro rata for the payment of the salary of her commission. Iowa did so until 1888 when a popular sentiment seemed to prevail that the payment of salaries by the railroads brought the commission more or less under the influence of the railroads.<sup>1</sup> This was changed when the railroad laws were remodelled and salaries are now paid by the state.

Other facts of deep interest and importance in our discussion, shown by the first table, are the legal qualifications of commissioners. One fault with the present state commissions lies here. The difficulty is not the lack of uniformity but the almost complete lack of any requirement in the laws regarding the special fitness of commissioners. In only three of the commission states are any qualifications prescribed by law, excepting those of a political nature. Thus over 90 per cent. of the states that boast of railroad commissions are totally without any safeguards in the form of special requirements of commissioners. In Minnesota the law reads,—“one must be from the opposite party from the governor;” in New Hampshire not more than two can be from the same political party. The three states that merit distinction by prescribing a standard of fitness for their commissioners are Connecticut, Maine and Georgia. In Connecticut one commissioner must be a lawyer, one a civil engineer of ten years’ practice, and one a business man; in

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<sup>1</sup>Senate Committee. Testimony p. 1003.

Maine one must be a lawyer, one a civil engineer, and one a railroad man; in Georgia one must be a lawyer, one a railroad man, and one a business man.

It is unnecessary to call attention to the differences in the data on the requirement of bonds; or on laws forbidding commissioners to hold stock, or to have any pecuniary interest in the roads of the state. Scarcely one-half of the states require a bond, and they are nearly uniform in prohibiting the holding of stocks or bonds and any connection with the railroads. But these laws have been indifferently enforced.

In the second table, which pertains to the powers of commissions, several facts stand out preëminent; first, the lack of uniformity, which, if important and necessary in construction is vastly more essential here; second, the helpless condition of some of the commissions which have the machinery and yet do not run for want of power and energizing force applied through the law; and third, as a consequence of the preceding, the unguarded manner in which the railroads are managed and the liberty and license this vast aggregation of industrial powers is accorded; in other words, the too tenacious adherence to the principle of *laissez-faire*.

Let us consider the main features of the commissions, with respect to their powers and duties in detail. The commissions of Group I, as a rule, do not possess the power to fix, alter or revise rates. Massachusetts has under special act exercised the power to revise rates, otherwise she has no power whatever over rates. The Maine commission, on the contrary, has clearly defined power to fix rates and even to make schedules, but the power has never



been exercised. Neither of these commissions, nor any of the commissions of this group has been granted the power to make classifications of freight or passenger service, as is the rule among the commissions of Group II. The commissions of both groups without exception have power to hear complaints under oath, which shows the idea of their creation; and all but two have power to summon witnesses and issue subpoenas. It may seem that because the commissions have power to do the same things, this power is exercised in the same manner. This is a mistake. Of those commissions that have power to make classifications of freight and passenger rates, some do not exercise the power, others use sparingly, while a few exercise the power to the full extent of the law.

The Illinois commission divides the roads into two groups and fixes a separate schedule for each, making a slightly higher rate for the less prosperous and least favorably situated roads. In Iowa the roads are divided into three classes. The commission fixes schedules of maximum rates for "A" class roads; a rate of 15 per cent. higher on "B" class roads; and on "C" class roads a rate 30 per cent. higher than the rates on "A" class roads. Rates are fixed on the mileage basis, the unit being five miles; and tables are prepared for all distances between five and five hundred miles. The commission makes four merchandise classes per one hundred pounds, specified as "first," "second," "third," and "fourth" classes; six special carload classes per one hundred pounds, specified as "fifth class," "Class A," "B," "C," "D" and "E;" four carload classes per one hundred pounds, which include wheat, corn, lumber, salt,<sup>1</sup> etc.; four live stock classes per car;<sup>1</sup> and,

<sup>1</sup> *Vide* Note, p. 61.

finally, three coal<sup>1</sup> classes per two thousand pounds; thus making a total of twenty-one classes. Georgia has a "standard freight tariff" which fixes maximum charges per one hundred pounds on the various classes of freight per each ten miles up to four hundred and sixty miles; and in addition a number of special rates on leading products, making twenty-two classes in all. All modifications are made upon a percentage basis as may be deemed advisable by the commission. Passenger fares are fixed at three cents per mile except on five roads, on which the rate is four or five cents. Their uniform classification accompanying the schedule consists of a series of thirty general freight rules and regulations. It is estimated that the number of changes necessary from their standards averages about ten per year.<sup>2</sup>

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<sup>1</sup>Note: The classes under this head include the transportation of commodities, as follows:—

- 1st. Wheat, flour, millet, flax-seed.
- 2nd. Corn, oats, barley, other grain and mill-stuffs.
- 3rd. Hard and soft lumber, lath, shingles, sash, doors and blinds.
- 4th. Salt, lime, cement, stucco.

Live stock classes:—

- 1st. Horses and mules in carloads, minimum weight 20,000 lbs.
- 2nd. Fat cattle, . . . . . 19,000 "
- 3rd. Hogs, (single deck) . . . . . 15,000 "
- 4th. Sheep, (single deck) . . . . . 10,000 "

Coal classes:—

- 1st. Hard coal.
- 2nd. Soft coal, lump and nut.
- 3rd. Soft coal, pea and slack.

*Vide* Report of Railroad Commission of Iowa 1889, p. 934. Schedule in force January 1, 1890.

<sup>2</sup>Senate Committee Testimony, p. 1417. Also, Eighteenth Report of Railroad Commission of Georgia, 1890. Their rules and classification tables cover above thirty pages of printed matter in their report.

It is doubtful if there are two commissions which have the power, that classify freights alike; nor is the power uniformly exercised. This has led to vast expense and unnecessary trouble to the railroads. In Georgia one kind of goods appears in one class, in Alabama the same kind in another class, and in Iowa in another with a rate sometimes correspondingly lessened or raised and sometimes not.<sup>1</sup> The same is true, not only of local or state business, but of interstate business as well.

The principle classifications throughout the Union on December 1, 1888, were as follows:—the Official, embracing the territory east from Chicago and north of the Ohio river; the Western, embracing the territory west of the Mississippi river; and the Southern Railway and Steamship Association classification, embracing the territory south of the Ohio river and east of the Mississippi. In addition to these there were a number of state commission classifications and several "joint" railroad classifications. In the territory where the Official was chiefly used there were two others: the Boston and New York "A," and Canadian Joint classifications. In the territory where the Western classification was used there were besides four others: the Illinois state commission,

<sup>1</sup> Note:	Georgia Classification and Tariff.*	Iowa Classification and Tariff.†
Fresh Beef—	Class B: 6c. 5 miles. 18c. 100 "	Class 3: 9.34c. 5 miles. 16c. 100 "
Flour per bbl.	Class F: 9c. 5 " 23c. 100 "	Class 4: 4.5c. 5 " 8.1c. 100 "
Oysters in cans or kegs,	Class 4: 8c. 5 " 30c. 100 "	Class 1: 14c. 5 " 24c. 100 "
Oysters, (shell) in bbls.	Class 5: 7c. 5 " (O.R.) 23c. 100 "	Class 2: 11.9c. 5 " 20.4c. 100 "

\*Classification and Tariff in force Jan. 1, 1890. *Vide Eighteenth Report.*

†Classification and Tariff in force Jan. 1, 1890. *Vide Twelfth Report.*

Joint Texas, Missouri state commission, and Mexican. In the territory of the third, six others: Florida state commission, Alabama state commission, Georgia state commission, Associated Railways of Virginia and the Carolinas, Mississippi state commission, and South Carolina state commission. These classes vary to a greater or less degree. It will be noticed that three different classifications obtain in the same territory. To carry the anomaly a step further it was possible and not improbable that the same kind of goods was often carried at, at least, two different rates through the same state, on the same road and in the same train, and perhaps in the same car. It comes nearer to our experience perhaps when we consider the passenger traffic; especially about the time that the interstate law was passed. It was not an uncommon occurrence to ride from Detroit to Chicago at a much less rate than from Jackson or Ann Arbor to Chicago; the train service being exactly the same.

Again in the matter of examining books and accounts the commissions have not uniform power; in Missouri and California they may call for books, papers, etc.; in Massachusetts, Illinois and Minnesota the power of the commission is full and explicit. It is one thing to examine books under oath when deemed necessary, and quite a different thing to call for them when wanted. Seven of the commissions have power to call for books and accounts; twenty-two have the power to examine them, by implication, at the office of the corporation. The power is rarely exercised, consequently the good effect of the law is lost. How this power may be more effectively enforced will claim special attention further on.

The power to compel attendance of witnesses and the power to prescribe the form of report are, so far as the laws go, substantially uniform. In the latter the trouble is not so much the mere lack of exercise of the power as the variety of ways and degrees in which the states have exercised it. This was clearly shown by the statistician of the Interstate Commerce Commission in a paper<sup>1</sup> read before the Railway Conference which met at Washington in March 1889.

While every state commission of the first and second groups<sup>2</sup> possesses the power to require uniform reports from the roads, only ten, or 27.7 per cent. have the power to require a uniform system of book-keeping; so that while one road may be obliged merely to copy the items called for by the commission from its books and balances, another road may be obliged to make up its reports from entries and items as they stand on its books which have been kept in its own way, perhaps without any system at all, and certainly without any regard to uniformity with any other road. This occasions errors and frequently results in an excuse, often a valid one, for not rendering a report, on the ground that the data called for cannot be obtained. The railroad officials are often not so much at fault, for the method of book-keeping is intricate. The fault lies with the state legislature and the people in not requiring first of all a uniform method of book-keeping<sup>3</sup> adjusted to a plan

<sup>1</sup> *Vide* First Annual Report of Statistician of Interstate Commerce Commission. Appendix p. 343.

<sup>2</sup> Except Tennessee which, it will be remembered, has no commission law.

<sup>3</sup> The railroads themselves are to be accredited with bringing about simplification and uniformity in this matter of book-keeping through the medium of their Association of Railway Accounting Officers whose efforts along this line may be seen from their Fifth Report (Cape May Meeting) July 9 and 10, 1890.

which will render reporting easy.<sup>1</sup> If this were required, the items called for could be copied or easily compiled from books and accounts without additional labor and expense, and there would be no incompleteness of railroad returns to the various commissions.

Perhaps enough has been said concerning the powers of the state commissions to show their dissimilarity.

Let us consider Table III, which treats of the duties of commissions, with the same object in view. On the question of periodicity of reporting the commissions are divided into two classes, namely: those reporting biennially (Wisconsin, Mississippi, Oregon and Vermont); and those reporting annually, which includes the remainder of the commissions. Reports are made in every case either to the governor, or to the legislature directly. The commissions require, at least, yearly reports from each road within their jurisdiction.

The time for ending the fiscal year is also varied. Uniformity in this matter is essential for successful and accurate reporting. Strong efforts have been made within the past two years, through the influence of the statistical bureau of the interstate commission to secure such necessary results. How far the effort has been successful statistics prove. According to the table of the statistician showing data called for by the various state commissions (March 5, 1889),<sup>2</sup> twelve state commissions ended their fiscal year June 30, or 42.8 per cent. According to the second

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<sup>1</sup>Cf. "Uniform Railway Statistics." A paper by Professor H. C. Adams, Statistician Interstate Commerce Commission.

<sup>2</sup>Second Annual Report of Statistician of Interstate Commerce Commission, p. 40.

annual report of the statistician, twenty-one of the twenty-eight states from which the data were taken—counting the two Dakotas—had (March 1, 1890) adopted June 30; or 75 per cent., a gain of 32.2 per cent. in one year.

Concerning the duty to investigate cases when called on by board of trade, town or individual; and the duty to examine cases of accident, the table shows almost no variation; but the functions are variously exercised.

Further evidences of diversity to be found in this table, namely; with respect to the duties of inspection of road-beds, and the inspection of the financial management of the roads, also the duty to recommend new or altered legislation, will be reserved for later consideration. A study of the general railroad laws of the various states and territories reveals the same general fault.<sup>1</sup> The reason for this is obvious; the laws were not framed with a view to securing harmony of effort among the commissions of the states, nor were they framed with even the thought of effecting an interchange of ideas. With a single exception,<sup>2</sup> no provision has ever been made by law empowering and requiring a commission to confer with other commissions to bring about uniformity of law and harmony of action.

Undoubtedly enough has been said to convince the reader of the fact that uniformity is decidedly lacking; and further, also, that even where there is close similarity of powers and laws, the commissions

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<sup>1</sup> *Vide* Appendix. Table IV.

<sup>2</sup> Alabama: *Vide* Laws of 1881, No. 91, Sec. 31. Tennessee had a law somewhat similar: *Vide* Mr. Craft's Pamphlet "State Railroad Commissions," p. 68.

have exercised the power in so many different ways and degrees that uniformity becomes practically diversity itself. Uniformity in the laws then is not enough; there must be means by which uniformity of enforcement also may be provided for and secured.

It may be well before taking up the constructive part of the work, to ask what are some of the results which now appear from this great defect. Then the necessity for reform will be fully determined.

It is well known that the railroads in their construction are not limited by the jurisdiction of any commission, nor of any one state. The jurisdiction of a state and commission stops at the boundary, but the railroad goes on into another state under a different system of regulation, then to another and another. It receives its charter from the state wherein it was created a corporation, and the general laws of neighboring states admit it freely upon showing this charter. Thus it is brought into touch with varying laws, and protected or embarrassed at the will of the people. Each state commission exercises its own peculiar power and functions upon it. The railroad is supposed to submit and at the same time give in return equal facilities to all her patrons and perform the same service for each citizen regardless of state or district or boundary of any kind. But how are they expected to succeed, and how can they produce the good results of which they are capable when the pressure upon them is so varied and the laws which govern them, either hostile, friendly, or indifferent, according to the temper of the state legislature at the time? In states side by side, where the same railroad systems carry the same kinds of products, and are governed by the same principles of



trade, and where in all other industries the influences that affect the world's life are equally felt, the transportation industry, on account of the different and widely varying policies of regulation, produces differences in the prosperity of neighboring districts and the efficiency of service is disproportionate and discriminating.

A few examples may be mentioned. In Louisiana there is no restrictive legislation, while across the river in Mississippi there is a commission patterned after the Illinois plan, with power to fix, alter and revise rates and make schedules of rates which are to be taken as *prima facie* evidence in courts of law. The same railroad systems are in each. In Colorado the law expressly provides that there shall be no fictitious increase of stock, while in Kansas and California the law is silent on this point. Consolidation of parallel or competing lines is forbidden by law in Nevada, but not in California. The Minnesota, Iowa and Illinois commissions have power to fix maximum rates on all freight and passenger traffic; the Wisconsin commissioner, to fix rates on but three roads; the Michigan commissioner no power at all, and Indiana no railroad commissioner nor power. What is the effect? The certain natural effect is to provoke hostility on the part of the roads towards the public and for this they are likened to the "robber barons of the Middle Ages."

Is it any wonder that the railroads do not recognize the laws nor seek to obey them? Where is the incentive? Is it strange that such a multitude of complaints (of extortion and discrimination) arise on every hand? Is it strange that the railroads call for relief from oppressive legislation which, they affirm,

is ruining their dividends and increasing their debt? Instances need not be multiplied. A study of the map herewith appended<sup>1</sup> bears witness to the discriminating influence of such heterogeneous legislation. The surprise is that the roads have endured this condition of things as long as they have; and that the people have been so well served by them. The present condition of affairs is, in the first place, unfair and unjust to the corporations and all the interests involved in this industry. A railroad corporation is an industrial organism. It has functions to perform for society which minister to its growth and are even essential to its life and existence, and to hamper or check it in one part unwisely, wherever in the entire system of roads that part may be, is detrimental and disastrous to the whole.

Again, it prevents the best regulation, and the free operation of wise laws in states where they are obeyed. It often happens that unwise interference in one state is more detrimental to the industrial life of another state than to its own.

Again, it is not conducive to the best interests of the community or the commonwealth as a whole, for, when the laws and regulations established by neighboring states are dissimilar, the railroads finding it a hindrance and detrimental to their own uniform system of operation to obey the laws, do not obey them; in consequence the laws and regulations are set at naught, the influence of the commissions is seriously impaired, and money, time and efforts are thrown away without return to the tax-payers and the people. This is the condition of many of the state railroad commissions to-day. What is necessary

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<sup>1</sup> *Vide* Appendix B.

then, is to strengthen the commissions in adjoining states and bring them all up to a common standard of efficiency, whatever that standard may be, so that the roads will have uniform pressure brought to bear upon them throughout their entire length. This could not in any way damage the roads, but would prove beneficial to both parties alike. As it is now, if a man resides in Missouri or Wisconsin, he must rely on the courts entirely for redress and institute suit at the cost of his own time and money; but in Iowa or Illinois, neighboring states, his case is handled by the commission at the expense of the state, and the complainant is deprived of but little time and is at small expense of litigation. The result is, as statistics show—in Missouri and Wisconsin, but few cases are brought before the courts against the roads, and the people suffer their abuses in silence; in Iowa and Illinois, the public interest is aroused, the case of one is the interest of all and the railroads are educated up to greater carefulness in performing services for the public as common carriers.<sup>1</sup>

To bring about the best results the first thing needful is that uniformity should prevail as far as possible among the states in their commission laws and in such other laws pertaining to railroad regulation and control as the commissions are empowered or required to administer. In this fact will be found

<sup>1</sup>Note: That there might be no hesitancy in bringing complaints before the commission, the Iowa board in its first three reports deemed it advisable to publish full proceedings of each case which came before it. Lack of knowledge as to the workings and methods of the commission system should not stand in the way of any complainant, but commissioners should make the access to them easy and speedy. The wisdom of the action of the Iowa commissioners was proved by the greater familiarity on the part of the public with their methods. *Vide* Iowa Railroad Commission Report 1881, p. 125.

a suggestion of the solution of the first question proposed, namely: How may the state commissions be rendered more effective?

2. In answering this question three steps are proposed, as follows:

A'. The establishment of commissions in states where there are none at present.

B'. The establishment of certain uniform laws to increase the efficiency of commissions and to secure better regulation.

C'. The establishment of the principle of cooperation among commissions.

Before entering into a discussion of the steps just suggested, it is appropriate to state the arguments to be advanced in support of the theory that uniformity could be secured at the present time, in the midst of such a mass of conflicting state laws. These arguments are as follow:

First: Any degree of uniformity whatever suggests at once the possibilities of further developments along the same line. We have previously said that sufficient uniformity already exists to serve as an encouragement. A glance at the tables will prove the statement true. For example: In Table I the item showing the states in which the commissioners are forbidden to hold stock, receive presents, etc.; in Table II the item showing the powers possessed by commissions to hear complaints, and to compel attendance of witnesses; also the power to prescribe the form of report roads shall make; in Table III the items showing the periodicity of reports, the number of commissions using 1891 interstate forms for their reports, the duty to investigate complaints

when called on by boards of trade, etc.; in Table IV the laws against discrimination where uniformity is almost complete, etc. All these items suggest that greater uniformity is possible.

Second: Because of the interstate nature of the railroads, the states have gone farther in the matter of securing uniform railway laws than in any other matter. Hence they are nearer success.

Third: The law of tendencies must be recognized. Uniformity is even now actively in progress. It is claiming the united attention of the American bar.<sup>1</sup> It is under discussion in the Conference of Railroad Commissioners.<sup>2</sup> It is advocated both by the railroads and by the people, and both seem willing and ready to coöperate to secure it. It is even now in sight in the matter of reporting, and in making classifications of freights, where it is most difficult to obtain it from the very nature of the case.

Fourth: And lastly, all recent railroad legislation has been enacted with a view to uniformity. Since the Interstate Commerce Commission law was passed in 1887 a number of the states have enacted laws containing the substance, if not the exact words, of the interstate law. This is certainly commendable and encouraging. Iowa has introduced many of the features of the interstate law in her new commission law (1888). Missouri, in an extra session of the general assembly in 1887, enacted a law entitled, "An Act to Regulate Railroad Corporations," which approaches closely the interstate law. As shown by the tables, Nebraska, Connecticut, the two Dakotas and Oregon have made important changes since the

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<sup>1</sup> *Vide* Proceedings at national meeting held at Indianapolis, 1889.

<sup>2</sup> *Vide* pages 99 and 101.

advent of the interstate law and according to its principles. The recent commission laws of Texas and North Carolina contain sections and clauses almost identical with sections and clauses in the federal law.<sup>1</sup> This is certainly conclusive proof that uniformity can be secured to a much greater length than has yet been attempted. There can be no doubt as to its benefits when once it is secured.

Recurring now to the steps proposed as the solution of our first question, they will be taken up in order and discussed.

A<sup>1</sup>. In the first place commissions should be established in those states where none now exist, especially in the older and more densely populated and highly developed portions of the country. The reasons for this are obvious. There are to-day eleven states and four territories of the Union, or 30.61 per cent. without administrative machinery for enforcing the railroad laws or *any* means of supervisory railroad management. Add the four states having only boards for the assessment of property for taxation and for the collection of statistics, which can hardly be called railroad commissions, and we have nineteen states and territories, or over 38 per cent. of the total number. These represent 1,118,350, or 36.9 per cent. of the total of square mileage of the country;<sup>2</sup> 16,370,466, or 26.1 per cent. of the total of population;<sup>3</sup> 20 per cent. of the total acreage of im-

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<sup>1</sup>Cf. Railroad Commission law of Texas (1891), secs. 15(a), 15(c), 15(h), 16, etc., with Interstate Commerce Commission law, secs. 3, 4, 22, 10 clause 2, etc. Cf. Railroad Commission law of North Carolina (1891), secs. 4, 6, 25, etc., with Interstate Commerce Commission law, secs. 2, 3, 4, 22, etc.

<sup>2</sup>Not including Alaska.

<sup>3</sup>"Census Bulletin," December 12, 1890. Not including Indian Territory.

proved land;<sup>1</sup> and 23 per cent. of the estimated value of all farm productions (sold, consumed, or on hand) in the country.

When one considers that this number of states includes not the smallest but some of the largest, not the weakest but the strongest; not the poorest alone but the richest, as well; not the most thinly settled but the most densely populated; not those with the smallest railway mileage in proportion to total mileage but with a proportion among the largest, and that they all together represent one-fourth of the total of railway mileage of this country exclusive of Alaska, the necessity for the creation of new commissions in those states seems imperative.

*B*<sup>1</sup>. In the second place, uniformity in certain important laws should be established in order to secure greater efficiency in each commission and greater harmony among all of them.

It is our purpose to mention only a few of the most important changes which are deemed necessary; and which, it is believed, could be easily and successfully secured. Summarily stated these changes are classed as follows:

*a.*—Those affecting the organization of commissions.

*b.*—Those affecting the powers of commissions.

*c.*—Those affecting the duties of commissions.

*d.*—Those affecting the laws which should be brought under the administration of the commissions.

It is our purpose to consider each of these classes of changes briefly and in order.

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<sup>1</sup>Tenth Census (1880) Compendium, Pt. I, p. 684. Not including Indian Territory, Oklahoma or Alaska.

a.—Great efficiency in the organization of commissions may be secured in two combined ways, namely: *First*, by removing the appointment of commissioners from the hands of the governor or legislature and requiring that the commissioners shall be elected by a popular vote, as other state officers are elected; by providing for a term of office of not less than six years and raising the salaries to a point that will make the position sufficiently remunerative so that men in other lines of work will not be required to make large pecuniary sacrifices; and *Second*, by providing by law that the office of commissioner may be held by such men only as are peculiarly qualified, regardless of political affiliations; and by requiring a separate and distinct oath of office from each commissioner in regard to his fitness for the position. One should be required to take oath that he has been for at least ten years a practitioner of the law; another that he has been connected with the official management of one or more railroads for at least ten years; a third that he has pursued a business career for a certain number of years, fifteen at least. Such oaths should be administered in addition to a strict oath that they are not holders of stocks or bonds, nor in the employ of roads, nor in any way pecuniarily interested in any railway corporation whatever. A bond should be required also from each commissioner to the amount of not less than \$10,000 for the faithful performance of all his duties and functions.

A commission depends for its success and its efficiency upon the men who compose it rather than upon the law which created it. It may be given all the power that legislatures can bestow, and may be



supported by public sentiment, and yet prove an unprofitable servant of the government and a hindrance to its success. The weakness of our railroad commissions in the past has been due more to the fact that the men have been incompetent than to the fact that the laws have been inefficacious. Inefficient men have had charge of the enforcement of the law,<sup>1</sup> who knew little or nothing about the laws, much less about practical railroading, and nothing whatever of sound financial and economic principles.

This state of affairs is caused by the fact that politics are allowed to govern the appointments and fix the requirement for public offices. But politics should never govern in questions involving such vital interests as the regulation and control of the railroads. Would railroad officials choose their efficient engineers on party grounds? No more should those who are chosen to supervise and regulate this industry in its entirety be selected on account of their political complexion. Upon the very arteries of trade and commerce it is disastrous to lay an inexperienced and an unskilled hand.

*b.*—Greater efficiency ought to be secured in the matter of powers of commissions. *First*, a more uniform system of regulation of rates should be adopted. Each commission should be granted the power to fix rates and make schedules of rates, that the local interests of the commonwealth may not suffer on account of the through traffic. The interstate commission, which

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<sup>1</sup>Mr. Charles Francis Adams says that when commissions first arose in the West, state executives were so afraid of a bias in selecting members for commissioners "that they sought out men whose minds were a blank." This is damaging testimony, and the more serious because true. *Vide* Adams' "Railroads, their Origin and Problems," p. 133; also Note, p. 134. Cf. Part I, p. 28.

is the complement to all state commissions, should serve as the standard toward which such changes should tend. From the tables it may be seen what these powers are. While not posing as an ideal commission either in point of organization or in the matter of power, the interstate commission yet serves as a standard; first because it holds the same position toward the trade and commerce of the various states that the federal government holds toward the states themselves; and secondly because of its recent establishment and the fact that it was created according to what was best in the state commissions and had the opportunity of profiting by their experience. *Second*, the commissions should have equal power to make uniform classifications of passengers and freight. This and other changes could be easily secured through the adoption of a system of coöperation to be suggested later. *Third*, in order to make the power over rates effective when applied by each commission, the laws should expressly declare that schedules of rates and classifications fixed by the commissions, after the railroads have been given a fair opportunity to be heard, shall be considered as conclusive and binding upon all courts, as the valuations of tax commissions in matters of *ad valorem* assessments of property, or "the acts of other administrative officers;"<sup>1</sup> and in addition provision should be made whereby the *onus* should rest on the railroads to prove that rates complained of are reasonable, as is the law in Illinois. The reason for such a provision is clearly shown in the history of

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<sup>1</sup>"Proceedings of Third Annual Convention of Railroad Commissions," p. 82.

railway legislation in Illinois.<sup>1</sup> *Fourth* and lastly, the commissions should have the power to require a uniform system of accounts to be kept by the roads and to enforce the requirement. Table II shows that but ten state commissions have this power and, doubtless, it is well known that the power is not exercised. It would be fruitless to exercise it, unless some sort of uniform action could be taken in the matter; otherwise railroad book-keeping would be involved in greater confusion than it is at present. The interstate commission has this power, but has thus far refrained from exercising it, for, as the commissioners perceive, to exercise it in any other than a uniform manner over the roads, both state and interstate, would be discrimination. So that in this matter there must be uniformity if all the roads are to be fairly dealt with.<sup>2</sup>

c.—Greater efficiency of commissions would accrue, also, from the exercise of the duties of inspection: *First*, as regards the inspection of railroad equipment, including road-bed, bridges, signals, couplers, brakes, and all other matters pertaining to the outside operation of railroads; *Second*, as regards the inspection of books, accounts, contracts and all matters included under the head of financial management of railroad corporations.

The whole matter of inspection has never been clearly defined either in the first or second aspect;

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<sup>1</sup>Senate Committee Report. Testimony, p. 732. Sixth Annual Report of Illinois Railroad and Warehouse Commission.

<sup>2</sup>Uniform book-keeping has elicited the serious attention of the interstate commission during the past two years. This has led the railroads to discuss among themselves active measures for securing this end. *Vide* Proceedings of Railroad Accounting Officers. Cape May Meeting, July 1890.

nor have the state laws, where they exist, been enforced uniformly, nor in all cases wisely. System and method, essential elements of successful and effective control, have been sadly lacking in this most important matter where they are specially necessary.

First. Concerning the inspection of road-beds, the table shows that inspection is required in but few cases; and in most of the states where it is required, it is a farce. Statistics of railroad accidents due to causes within the control and under the supervision of the commissions prove this. The laws are lax. It is left to the discretion of the commission to inspect whenever it feels inclined to do so. Once a year or every two years as the case may be, the board chartered a palace car and rides over a few of the principal roads and the duty of inspection is done. But when a loaded passenger train has gone through a bridge; or when 1972 employees<sup>1</sup> (one in every thirty-five) are killed in one year, on whom falls the responsibility? Is any adequate return made? No—nor can there be. Read the statement of the statistician in his second annual report (1889), page 38. He says, "It is possible to carry the idea of economy too far and to lose sight of the fact that life is more important than money," and again, "Certainly, if government can do anything to secure greater protection to the men engaged in the business of inland transportation," and we may add also, to those who travel upon the railroads, "the figures here given provide a sound basis of fact for an argument supporting any measure appropriate to the end sought." Argument

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<sup>1</sup>Second Annual Report of Statistician of Interstate Commerce Commission, p. 37.

is unnecessary. It is purely a question of ways and means, and should be undertaken by the national government, and uniformly adopted in the several states<sup>1</sup> as speedily as possible.

In Massachusetts the board appoints a bridge engineer, and more precautions are taken against loss of life or injury than in most of the states. It would be well if the states of the West could catch the spirit of those of the East and by the interchange of ideas come to some agreement upon a uniform system of inspection.

Each board should have power to appoint an efficient engineer whose duty it should be to inspect every road in the state, semi-annually, and make reports to the commission. In states where the railway mileage is great, provision might be made for an assistant. The expense of such an officer would be small in comparison with the risk taken without such precaution. This does not at all preclude certain requirements on the part of the railroads themselves. In fact, it would be an excellent law that should complement state inspection by requiring each road to keep in its employ a civil engineer whose chief duty should be to make monthly inspection of his road and report to the railroad commission. The railroad civil engineers would enable their road to obey the laws, and the state inspector would see that such obedience was secured.

In these days, when competition in speed and service is rife, and trains are heavy and fast, the roadbeds of England are needed rather than those to which we are now intrusting our lives in America.

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<sup>1</sup>Cf. Recommendations of Massachusetts legislature, February, 1890. Memorial to Congress.

Second. Concerning the inspection of the financial operations of railroads the necessity for change is imperative. Referring to Table III it will be noticed that the laws of the various states making it the duty of commissions to inspect books and accounts of the railroads are not uniform nor uniformly carried out. In Virginia the commissioner has no power to inspect books and accounts; in Ohio the railroad must furnish books and papers upon the request of the commissioner; in New York the board has power to examine books and accounts; but the secretary of internal affairs in Pennsylvania has no such power, nor has any one, it seems, the power in Maryland; in Illinois the commissioners have full power which they never exercise; while in Indiana both commission and power are lacking. Iowa has a law empowering her commission to inspect books and accounts; Nebraska grants the power to her commission to call for the information desired, which means whatever the roads are disposed to furnish. In Connecticut the commission has no such power; but in Massachusetts the power of the commission is full and adequate. The law of Massachusetts reads:

(Section 21.) The board shall from time to time in each year examine the books and accounts of all corporations operating railroads or street railways, to see that they are kept in a uniform manner and upon the system prescribed by the board. Statements of the doings and financial condition of the several corporations shall be prepared and published at such times as the board shall deem expedient.<sup>1</sup>

And further, a point which no other commission has reached, they have power, and have exercised the power, of employing a skilled accountant whose

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<sup>1</sup> General railroad law of Massachusetts (1882), Chap. 112 of "Public Statutes."

duty it is to supervise the method by which the accounts of corporations operating railroads or street railways are kept.<sup>1</sup>

It is one thing to call for accounts and books and quite another to be given power to make personal inspection of the same, and still another thing to be expected to inspect books and accounts. The first has been the general practice of commissions; the second has been rarely undertaken, hence the third has never had the opportunity of bearing fruit.

Doubtless a large percentage of our railroad troubles arises through some form of business contract more or less secret, often intentionally unknown to the higher railroad officials themselves, and never known to the stockholders whose interests are most directly involved. If it were understood that all such contracts, that the books from ledger to memorandum, that all vouchers, receipts and bills, and every other paper or record in the hands of railroad officials pertaining to their business, were at any and all times subject to the scrutiny of state inspectors having the power to examine all officials under oath with respect to the correctness of such books, accounts or papers, and having the power, also, to make periodical audits of all accounts, etc., it would unveil a host of violations of law and prevent a myriad more by removing the opportunity for secrecy.

To effect this reform it would be necessary to create boards of inspectors similar to those suggested for inspecting road-beds and the operation of the roads. Just in what form this should be done can-

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<sup>1</sup>“General railroad law of Massachusetts (1882), Chap. 112, sec. 11, of Public Statutes.”

not be definitely stated. In the nature of the case the means must be tentative at first. The matter could best be uniformly organized and put in operation through the medium of the annual conferences of railroad commissioners to be described later. A board of national inspectors consisting of three competent and experienced railroad accountants, one of whom should be the auditor of the interstate commission, might be created, with power to act for the commission. In addition—for such work is large—each state might provide for at least one inspector, whose duty should be to see that all the accounts of the roads in his state were kept uniformly and according to the method prescribed by the commission, or better, by the general conference of commissioners; also to examine the accounts both of income and expenditure to see that the proper entries had been made, and all bills, receipts and vouchers as well; in short to have access to all facts and to be required to examine periodically the financial condition of every railroad corporation. The national inspectors should occupy the same position with respect to the state inspectors that the interstate commission does with respect to the state commissions. The inspectors themselves should be required to take oath that they have performed the duty set for them fairly and to the best of their ability, and that the facts as stated in their periodical reports to their respective commissions are true and correct to the best of their knowledge and belief. The establishment of these boards should not prevent the commissions from exercising their powers of inspection whenever they may deem it necessary, but the purpose is to relieve the commissions as far as possible and to have this branch of



their work effectively accomplished after the manner of national bank inspection, and for a similar reason.

Precedents are not wanting. It is well known that just at the close of the civil war when the federal government imposed excise taxes, it was found to be necessary to establish a system of inspection and examination for the purpose of securing a correct and honest account of the taxes due the government. A permanent system of inspection of factories and workshops is carried on in England, in Massachusetts and in New York. Some states require the inspection of insurance companies; for example, Massachusetts, Pennsylvania, Illinois, New York, Georgia and California. Again in England, inspection of benefit societies is required; as it is also in New York under certain limitations, and in California.<sup>1</sup> The purpose of all this is that honesty and fair-dealing may be secured through the avenue of publicity.<sup>2</sup>

It is true that the roads would object to the scheme most seriously, but what have they not objected to? They objected to any laws regulating their actions in the first place; they objected to commissions; they objected to the fixing of rates; to the making of reports, and to every thing on which the people could in the least degree rely for security. Thus far, Mr. Bonham says,<sup>3</sup> the roads have succeeded in maintaining secrecy in financial management by judicial sanction.

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<sup>1</sup>Bryce: "American Commonwealth," Vol. II, p. 416.

<sup>2</sup>Bonham: "Railway Secrecy and Trusts," p. 122.

<sup>3</sup>*Id.* p. 40. Cases cited: *Boyd vs. U. S.*, 116 U. S., p. 616; *Kilbourn vs. Thompson*, 103 U. S., p. 168; *Pacific R. R. Com. Case*, *Federal Reporter*, p. 241.

The plan suggested, it is believed, is a wise and practical one. The objections which we hear raised are that the government has no right to interfere in such matters—"We are a private industry." The answer to this is,—You are a *quasi*-public industry, a public highway, a common carrier performing public functions—a position easily maintained in view of the opinions of the ablest jurists and the decisions of the highest courts. All of them confirm the right of the state to interfere in industries that are exercising the right of eminent domain, doing business under state charters and classed as common carriers, and that, in fine, are in their very nature public. The railroads recognize reluctantly the fact that the matter has been settled once and forever.<sup>1</sup>

It is right that the industrial corporations that exercise public functions should have their records or transactions, so far as they affect or concern the public, "open to inspection and scrutiny as are the public records of the state." The government has the right to inspect accounts of the roads and to inquire into all the affairs connected with their operation and existence, if it sees fit, even to determining whether the officials are managing the road for their own interest as stockholders and speculators, or as salaried servants of the people who are investors in them. The stockholders do not want their properties juggled with; they seek legitimate profits and favor publicity. In Massachusetts there is a law providing that:

"On the application in writing of a director, or of any person or persons owning one-fiftieth part of the paid in capital stock of a corporation operating a railroad or street railway, or owning the

<sup>1</sup> *Vide* *Munn vs. Illinois*, 94 U. S., p. 126. Opinion by Chief Justice Waite. "Principles of Constitutional Law," by Judge Cooley, p. 233.

bonds or other evidences of indebtedness of such corporation equal in amount to one-fiftieth part of its paid-in capital stock, the board shall examine the books and the financial condition of said corporation, and shall cause the result of such examination to be published in one or more daily papers in the city of Boston."

Financial inspection is objected to also on the ground that it is impracticable. Railroad men of recognized ability tell us that it cannot be done. "We ourselves don't know," say they, "what the expenses are for, and when vouchers come up to us we sign them because they were approved by a subordinate who had the matter in charge. How could an 'outsider' tell? How do we know whether a coal scuttle and shovel were bought and put in way-car No. 20 or not?" Whatever weight such objections may have, this much, at least, may be said—that it is certainly defective book-keeping that does not indicate to the cent what the expense items are, that does not account for expenditures as well as income. If such is the status of railroad book-keeping at the present time, the need of a uniform system enforced by the commissions is the more imperative; in order that those officials who cannot now tell whether certain articles were bought or not, may tell even to the matter of one hod and one shovel. A sound financial system, no matter how large the business, must account for the cents as well as the dollars. It is not to be imagined that railroad accounting is so peculiar or so complex that it is not necessary or essential to account for every item of income and expense as in any other business.

The duties of state and national inspectors would be largely to see that the roads obeyed the laws concerning uniform book-keeping. An expert account-

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<sup>1</sup>General Laws 1882. Section 22.

ant could easily tell whether honest accounts and balances were entered upon the books or not. The very existence of such an officer backed by public sentiment would go far toward inviting honest conduct, correct accounting and strict dealing among the roads. What has already been accomplished in the line of publicity by the publishing, filing and inspecting of charters and contracts, rates, etc., affords a sound argument for the success of further reforms in this matter of inspection of railroad financing.

d.—Finally, greater efficiency in the control of railroads by commissions would be secured by the adoption of uniform laws: *First*, concerning the matter of limiting railroad building;<sup>1</sup> *Second*, concerning the power and obligation of commissions to attend, either in person or by delegate, the national conferences of railroad commissioners and to cooperate one with another.

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<sup>1</sup>This matter has received but little attention from the three general conferences of commissioners which have already been held. It was among the subjects to be considered in the first conference which met in March, 1889, but when the conference met nothing was done upon the matter. At the second conference, May, 1890, the question appeared as the sixth topic on the calendar. The discussion proceeded along two lines; first, Should state and federal regulation be provided? and second, What should be the character of such regulation? In the unanimous opinion of the commissioners there present the necessity for some definite action to be taken by the states was imperative. The discussion, however, merged into the seventh topic, "State Railroads," and the whole matter was put into the hands of the committee on railway legislation, with Mr. Crocker of Massachusetts as chairman, where it still remains. This committee failed to report at the last annual conference, March, 1891; it was granted "leave to sit again and report at a future time." It is doubtful if the next conference will reach any conclusion in this matter. *Vide* Report of First General Conference, p. 97. Also "Proceedings of the Third Annual Convention of Railroad Commissioners" (1891).

1. In respect to the matter of limiting railroad building one is surprised to find, in looking over the list of states, that but six of them have laws touching upon this important matter. He is still more surprised to find that sheer indifference seems to prevail toward any legislation on this subject; although, as the history of railroad building shows, unrestrained building lies at the root of many railroad evils.

Whatever may be the grounds for disagreement between the two schools of writers on railroad questions, they are agreed on this point, that it is eminently advisable to have legislative inquiry into the public necessity of any new railroad before a charter for construction is granted. Whether or not a road should be built is for the public to decide, and not for construction companies or interested officials of the road with which the proposed road is to compete or connect.<sup>1</sup>

*Very costly & complicated*

In England it has been found that the checking and control of railroad building is more effective than volumes of law or regulations. The English government has been always extremely careful to guard the grant of the right of eminent domain. Every railway enterprise has been compelled to go to Parliament for its original powers to construct the line and to obtain parliamentary consent to undertake leases of other railroads that it desired to control. The parliamentary committees and the Board of Trade have frequently denied completely "all concessions for railway enterprises which were not deemed

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<sup>1</sup>Cf., Senate Committee Report. Testimony, p. 600. Also Testimony of Peter Day, of Iowa, *id.*, page 963; Testimony of George Blanchard, *id.*, p. 174.

necessary or beneficial to the community.”<sup>1</sup> It must be shown to the satisfaction of the Board of Trade that such proposed road *is necessary on account of the demand of trade and commerce*, and that the present roads are not sufficient; and it must be demonstrated that the new line is not constructed with the intention of cutting into the earnings of another road, but that the population and the country need it. Travelers in England are surprised that so few trunk lines connect the great cities of Liverpool and London. It is explained by the fact that the government prefers frequent trains and heavy traffic on few roads to many roads clamoring for traffic and support. This fact of itself shows that the government of England has but little faith in so-called railroad competition.

In the eastern portion of the United States a spirit of conservatism has come to exist in the matter of railroad building somewhat like that of England but not of the same effective nature. In Connecticut the law reads:

“ . . . . no railroad shall lay out and finally locate its road without the written approbation of the location by said (railroad) commissioners; and any company may change the location of its road; or of any section or part thereof, either before or after such location has been approved by commissioners, provided such change is made before the construction of said road or of said section or part thereof has been commenced, or is made with the written approbation of said commissioners. . . . ”<sup>2</sup>

Again,—“changes of curves, straightening and improving its line, widening slopes, embankments, etc., must be approved by commission and a certificate signed by commission filed for record in the office of town clerk where changes are made.”<sup>3</sup>

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<sup>1</sup>Senate Miscellaneous Documents, No. 66, Forty-ninth Congress. Report of Simon Sterne on Railway Systems of Western Europe.

<sup>2</sup>Statutes of Connecticut, Chap. CCXIV, Secs. 3460-3463.

<sup>3</sup>Statutes of Connecticut, *id.* sec. 3461.

In every instance the location and changes proposed must pass the censorship of the commission and receive their approval. In Massachusetts the general railroad act of 1874, section 26, provides that when directors fail to agree with the selectmen of any town, or mayor and alderman of a city, as to the route of a railroad in such town or city, the railroad commission shall fix the route in such town or city. Chapter 215 of the law of 1878 reads:

"No railroad corporation shall be authorized to locate or construct its road or any branch or extension thereof, or to locate upon and use any land or other property, except for making surveys, until a sworn estimate of the total cost of constructing the same, prepared by the chief civil-engineer of the corporation, shall have been submitted to the board of railroad commissioners and approved by them."

For crossing another railroad, and for laying out a road across a highway or townway at grade, the written consent of the board must be obtained. In Maine similar laws have been enacted.

In the West, on the contrary, the opposite spirit is found prevailing. This spirit may be best seen in the laws. For example in Wisconsin the law reads:<sup>1</sup>

"Any number of persons, not less than five, may form a corporation for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons or property, or for the purpose of maintaining and operating any railroad already constructed for the like public use, by making articles of organization, etc."

Nothing is said about the necessity of the road; the people know nothing about its construction, except what the papers say; other companies in the same territory as the proposed road are not supposed to know anything about it; legislatures have nothing to say about it; no one knows anything about it,

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<sup>1</sup>Section 1820. "Compiled Laws," p. 18.

except those five men, a few surveyors, a few men bribed to favor the project in a hostile community, and the secretary of state who grants the charter to exercise—one of the dearest possessions of the commonwealth—the right of eminent domain. When this road comes to the boundary of the state in which it receives its charter, another state welcomes it by express provisions in its laws, viz.:

“That any railroad company organized under the laws of other states is hereby authorized, upon being incorporated in this state as hereinafter provided, to build and extend its road into, through or across the state of . . . . and such railroad company shall have and possess all the powers, franchises, immunities and privileges, and be subject to the same liabilities as railroad companies organized and incorporated under the general laws of this state.”<sup>1</sup>

The provisions referred to are: first, that a certain construction be placed on the term “gross earnings,” and second, that a true copy of the articles of organization or incorporation, certified to by the secretary of state of the state of original incorporation must be filed with the secretary of state of the state of entry and a copy with the register of deeds of the county where is the principal office of the company in the state. All this is regardless of necessity, regardless of traffic, and regardless of the interests of anybody, except the new corporation. Here we have a practical illustration of the principle of *laissez-faire*.

Statistics show that the growth of railroad building is abnormal. From 1860 to 1880 the population of the country increased 59½ per cent.; farm acreage 31 6-10 per cent.; farm values 51 6-10 per cent.; while railway mileage increased 297 per cent. And the difficulty today is that there are more roads than the

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<sup>1</sup>Railroad, Grain and Warehouse Laws of Minnesota. Sec. 116, p. 61.



traffic will support. The country is surfeited with them and commerce has been taxed over \$60,000,000 for maintaining these superfluous roads.<sup>1</sup> They have been a hindrance rather than a help to trade, and have retarded progress rather than assisted it. They have been built too much with a view to the future and not mindful enough of the wants and profits of the present; but when once built they demand that the traffic shall pay what a doubled population and a doubled business are supposed to pay a score of years hence. Profits are based on the capital invested which seems just and right; but what is to be said about the wisdom of the investment in the first place. If a railroad corporation has overreached itself and sinks, is that any reason why the people should keep it afloat? If roads have miscalculated the needs of trade, and overestimated the financial success of the venture, shall the people make good the amount which the roads expected to realize from a voluminous traffic?

But who is to blame for this state of affairs? Surely the people, and no one else. They have lavishly voted aid and blindly granted the right of eminent domain; trusting in the dangerous theory that another road here or there will lower rates through competition, whereas the truth is, and many begin to see it, that one road is the same as another, and one as good as two where the traffic is not too great for one.<sup>2</sup> It is a mistaken idea that "every road has a right to live," and must derive from the business it has to do a sufficient income to meet its

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<sup>1</sup>Senate Committee Report. Testimony, p. 868.

<sup>2</sup>Mill understood this principle in his day. Cf. "Political Economy," Bk. I, Chap. IX, § 3.

obligations, pay interest on its indebtedness, and a dividend on its capital stock.<sup>1</sup> Nothing could be more unsound either in doctrine or policy. In the first place is it to be judged that because a road exists it must continue to exist, regardless of its usefulness to industrial society, its cost of building, and its policy of management? Because the West Shore has been built must it be supported? Is the traffic to be taxed to pay dividends on \$30,000,000 of misdirected capital which was expended by a construction company regardless of wisdom, or of anything save speculation and the self-interest of the company itself? To what extent, then, if this doctrine be true, may it not be carried? Are we to support every great industry in the country, though it may be useful in its nature, merely because it is in existence and because the incorporators expected to realize a profit, and demand that society shall secure them and sustain them? Do we do it for telephone, telegraph or express companies, or insurance companies? In fact do we do this for any industry in this country, except the railroad? Why should we discriminate in favor of that industry, even though the state grants it a charter to operate and exercise the right of eminent domain? A charter guarantees no dividend; it insures no profit nor does it pledge the commonwealth to its financial support. A railroad when built must seek existence and profit in the same way that other industries do. It should be built not for the purpose of destroying or injuring some rival, but should grow out of the demands of necessity. These demands are: Public use, density of traffic, population, acreage

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<sup>1</sup>Senate Miscellaneous Documents, No. 160, Fifty-first Congress, June 7, 1890, p. 16.

under cultivation, location of road, and the number and capacity of the roads already draining the same or adjoining territory as the proposed road. The decision as to this necessity should rest with the state commissioners, whose duty it should be to investigate, in person or through their engineer,<sup>1</sup> the proposed route, taking testimony if necessary, study the plans of the survey, and require the road to furnish such data as would meet the demands stated above. If the scheme stands this test, let the secretary of state grant the corporation a charter upon the unanimous recommendation of the commission. Regarding interstate roads, the interstate commission should be consulted for advice as well as the commissions of those states into or through which the proposed road is intended to run. In such a case the approval of the interstate commission and the commissions of the states immediately concerned should be secured in the form of a unanimous recommendation before the charter is granted. Apply such a test to some of the roads built within recent years<sup>2</sup> and the capital sunk in them would to-day be doing a better work. It would be supplying more pressing wants. Enforce such a uniform law and the gigantic schemes recently proposed, threatening financial and industrial ruin, would be nipped in the bud.<sup>3</sup>

2. In respect to empowering commissions to attend national conferences and to coöperate with one another, it is believed that something should be done.

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<sup>1</sup> *Vide ante*, p. 80.

<sup>2</sup> For example the "West Shore" and the "Nickel Plate."

<sup>3</sup> Cf. *Chicago Tribune*, April 22, 1890.

To show that there is room for reform reference need be made only to the fact that only one state in the Union has ever enacted a law making it—

“ . . . the duty of the railroad commission, by correspondence, convention, or otherwise, to confer with the railroad commissioners of other states of the Union and with such persons from states having no railroad commissions as the governor may appoint, for the purpose of agreeing, if practicable, upon a draft of statutes to be submitted to the legislature of each state, which shall secure such uniform control of railroad transportation . . . as will best subserve the interests of trade and commerce of the whole country.”<sup>1</sup>

Although the duty in the case just cited has not been performed,<sup>2</sup> owing to a failure on the part of other commissions to coöperate with the Alabama commission, yet the principle involved is paramount and should be applied by law to all state commissions.

The necessity for reform in this matter has been already sufficiently shown. In the past there has been too much independence and not enough interdependence. A valuable lesson may be learned from some of the systematic organizations of the railroads themselves. Take the Southern Railway and Steamship Association for an example. It aims at uniformity in railway management and operation. Its services have been of great value to the roads; and it has had a most beneficial effect upon the condition of the commerce of the South. If the commissions of the South would in the same manner coöperate; if they would strive to maintain equality of conditions,

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<sup>1</sup>An Act Establishing the Railroad Commission of Alabama. Approved February 26, 1881. Sec. 31.

<sup>2</sup>One exception may be made to this, and that is the convention of railroad commissioners which was held at Atlanta, Georgia, in October, 1881. *Vide* Second Annual Report of Alabama Commission.

and uniformity and harmony in regulation, greater efficiency in the control of the railroads would be secured. Likewise, if the commissions of the central states, of the eastern states and of the West would all coöperate and endeavor to promote an interchange of ideas and opinions, so that not only those commissions having jurisdiction over the same system of roads might become a unit of administration, an obvious necessity, but that all commissions might work in harmony, a far greater degree of efficiency might be secured than the commissions have, as yet, exhibited.

But it is natural to ask at this point, should such a movement stop with the securing of coöperation and the interchange of ideas among the commissions in certain sections of the Union? Would the states even then be able to regulate and control the roads within their separate jurisdictions? Can it be expected for a moment that state action without federal assistance is all sufficient to cope with the constantly increasing power of the roads? Then why was the interstate commission ever established; and why was its creation a necessary outgrowth and product of the times?<sup>1</sup> In spite of the changes which have already been suggested the commission system *ensemble* is still incomplete without maintaining the same vital relationship between state and national commissions as exists between the state and federal governments that created them. The state commissions are weak when striving alone, and the interstate commission powerless when working alone;<sup>2</sup> the one is the necessary complement of the other and effi-

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<sup>1</sup> *Vide* Part I.

<sup>2</sup> Third Annual Report of Interstate Commerce Commission, p. 73.

ciency can be secured only through the union of their respective forces.

The line of thought here suggested is to establish a permanent organization for the realization of coöperation among the various commissions; and to throw around the entire coöperating system of railroad commissions the full light of publicity and the strength of public sentiment. A discussion of this step, which it will be noticed is the third step proposed earlier (p. 71) as a solution of the first question advanced at the outset, will find its place most naturally under the second question, advanced at the beginning of this part of the paper, namely: How may the coöperation of state and national commissions be realized?

B-C'. *How may the Coöperation of State and National Commissions be Realized?*

This third and final step suggested as conducive to the greater efficiency of commissions is, it is believed, the most important of them all.

A movement tending in the direction of establishing the principle of coöperation for the interchange of ideas and for the securing of uniformity and harmony among commissions is already under way. In view of the fact it is desirable at this point to take up the thread of historical development where it was left in the first part of the paper.

First the history of the movement to the present time will be given; and second the line of development it should take will be marked out.

1. The idea of coöperation between state and national commissions, though new and as yet tentative,

had its rise from the same cause as the commission itself, viz.: out of necessity. For a long time the railroads have had organizations for unifying their several interests and have furnished an example as well as a cause for similar organizations for the purpose of regulation by the government. Railroads were interstate and consequently beyond state control. Railroads were state and hence outside the limits of federal control. To regulate interstate traffic the Interstate Commerce Commission was created; but to regulate state roads the states differed in their methods, some being without public regulation of any kind.<sup>1</sup> It happened that there was a class of roads which no regulation reached,<sup>2</sup> and yet which played as important a part in the drama of transportation as many greater lines subject to regulation. It was impossible to make a permanent and distinct classification of interstate and state roads, and it could readily be seen that much confusion and error might result therefrom.

Another fact showing this necessity that has been already discussed, is the difficulties that arise from the lack of harmony among the states regarding the regulation of commerce. It is desirable, and in fact necessary, that the duties and obligations imposed upon carriers should be "substantially alike,"<sup>3</sup> and "that the laws for regulation should be as nearly as possible identical." This is clearly shown in the matter of statistics,<sup>4</sup> and is of vital importance especially in matters of rates, book-keeping and other

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<sup>1</sup> *Vide* Tables, Appendix A.

<sup>2</sup> "Third Annual Report of Interstate Commerce Commission," p. 73.

<sup>3</sup> "Third Annual Report of Interstate Commerce Commission," p. 39.

<sup>4</sup> *Vide* Tables, Appendix A.

expensive forms of regulation that state laws require. How this has operated has been shown. The remedies are forthcoming.

On January 31, 1889, the secretary of the Interstate Commerce Commission, under its direction, issued a circular letter inviting the various railroad commissions of the several states, the railroad tax commissions and other public functionaries having to do with matters pertaining to supervision and management of railroad affairs, and such other state or territorial officers as would represent the interests of the people in their respective commonwealths; and also inviting the Association of American Railway Accounting Officers to send their representatives, to a general conference to be held in Washington, on March 5 following. Among other subjects of a more general nature, the following specific topics were proposed for consideration, viz.: 1. Railway Statistics—the formulation of a uniform system of reporting; 2. Classification of Freights—its simplification and unification; 3. Railway Legislation—how to obtain harmony in; and 4. Railway Construction—should regulation be provided? The discussion was not to be limited to these topics only but opportunity was to be offered for consultation on other matters of common interest which demanded public attention and regulation, such as heating and lighting of cars, automatic car-couplings, continuous train brakes, etc., etc.<sup>1</sup>

Responses to this invitation met with acceptance from twenty-two states and territories, some sending their entire board; also from the Accounting Officers Association who sent their president, Mr. Marshall!

<sup>1</sup>“Second Annual Report of Interstate Commerce Commission,” p. 40.



M. Kirkman, and other officers representing eleven of the strongest railroad companies in the country.<sup>1</sup> These representatives were welcomed on behalf of the interstate commission by its distinguished chairman, Judge Cooley, who stated the reasons for the conference and the subjects to be considered. In the discussion which followed special prominence was given to uniform railway statistics. Professor Henry C. Adams, the statistician of the commission, mapped out for the conference the line of development which it was deemed most expedient and wise to follow, to attain the best results.

The conference was in session three days and then adjourned *sine die*. Its importance and its benefits, although apparent at the outset, are implied in the following resolution unanimously adopted during the session:

"Resolved: That it is the opinion of the members of this Convention that provision should be made for annual conventions of railroad commissioners of the several states and the members of the Interstate Commerce Commission, to be held at such place as may be agreed upon, with a view of perfecting uniform legislation and regulation concerning the supervision of railroads."<sup>2</sup>

A more positive indication of the success of the first conference is found in the fact that six states in addition to the twelve that had already taken action, adopted June 30 as the date for closing the fiscal year. Furthermore, by the division of Dakota into two states and accepting the assumption of the statistician that Georgia and Kentucky had also adopted June 30, it appears that twenty-one states and the

<sup>1</sup>Report of First General Conference of State Railroad Commissioners, p. XI, XII.

<sup>2</sup>"Third Annual Report of Interstate Commerce Commission," p. 45. Also Report of First General Conference, p. 97.

interstate commission adopted the same date for ending the railroad year.<sup>1</sup>

A second conference was called by the committee in charge, to meet on May 28, 1890. Nine topics were suggested for discussion, viz.: 1. Railway Legislation; 2. Annual Reports from Carriers; 3. Uniformity in Railway Accounting; 4. Classification of Railway Statistics; 5. Classification of Freight; 6. Railway Construction; 7. State Railroads; 8. Reasonable Rates; 9. Safety Appliances for Railroad Cars. Twenty-three states sent delegates. Five officers of the Railway Accounting Officers' Association were present; also the Interstate Commerce Commission and its secretary, auditor and statistician. During the session, which lasted two days, the proposed topics were taken up in order, and some of them, reported through committees, provoked general discussion. A strong feeling of permanence and of confidence characterized this convention. Considerable enthusiasm was manifested and the spirit of work prevailed. After appointing a committee to call the next convention, the meeting adjourned.

A third conference met in Washington, March 3, 1891. This convention showed a decided advancement in knowledge of railroad questions and its published proceedings furnish a positive contribution to railroad literature. Besides the scholarly address of the chairman, Judge Cooley, a valuable paper by Judge Schoonmaker, on "Discrimination from the Use of Private Cars of Shippers," may be mentioned as a marked feature of the occasion. The scope of the work laid out by the convention for the present year may be seen from a list of committees

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<sup>1</sup>Second Annual Report of Statistician, p. 40.

appointed to report at the next meeting.<sup>1</sup> They are as follow: Committee to secure congressional action in regard to safety appliances; On reasonable rates; On uniformity of railway accounts; On discriminations from use of private cars of shippers; On railway legislation; On territorial assignment of statistics of operation.<sup>2</sup> The conference was in session two days and adjourned.

Mention was made above of some of the tangible results of the first conference. The further results since that time are still more pronounced. Table III shows that there are now twenty-nine states that end their railroad year June 30, an increase of 141.6 per cent. since the first conference met. There remain but three states<sup>3</sup> with regular commissions: California, Michigan and Missouri, whose fiscal year ends December 31. An equally strong showing is made in the form of reports used. In 1889 there were sixteen states using interstate forms; in 1890 eighteen, and now<sup>4</sup> there are twenty-two states. The other commission states—except two<sup>5</sup>—use forms that are similar to the interstate edition.<sup>6</sup> This near approach to perfect uniformity is the result of the annual conferences of railroad commissioners, and indicates what can be accomplished in other lines where uniformity is needed.

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<sup>1</sup>To be held in Washington on the second Wednesday in April, 1892.

<sup>2</sup>Proceedings of Third Annual Convention, 1891.

<sup>3</sup>New Jersey and Indiana—tax commissions—are not included.

<sup>4</sup>October, 1891.

<sup>5</sup>Michigan and Rhode Island.

<sup>6</sup>Correspondence of James A. Case, Assistant Statistician, October 19, 1891.

Such, in brief, is the history of this movement of coöperation down to the present moment. Doubtless the next conference will show further progress, and will endeavor to secure that permanency of organization and harmony of action which will assure for it the hearty support of the people.

2. Trusting to the law of tendencies it is to be hoped that the results aimed at will be secured. It seems almost unnecessary to indicate the line of development which this movement should take, as it may clearly be read in the tendencies of the times. However, two steps may be suggested to advantage which will give completeness to the arguments hereinbefore presented.

In the first place the general conferences should perfect their organization on a broad and permanent basis. That is to say, a constitution and by-laws, should be drawn and such other preliminary steps taken as are customary to give permanency to such organizations; the idea being to make the annual (or semi-annual) conference of railroad commissioners a permanent coöperating organization in which the best thought on the regulation of railroads shall prevail, where the consensus of opinion may be secured, where both sides of the railroad question may be heard, where the general opinion of the outside world may find expression either directly in prepared papers, or indirectly in communicated information, where the ideas advanced and the decisions reached may receive the stamp of *authority*, and finally where uniformity in the construction of commissions, in their powers and duties and in the railroad laws as well, can be easily and readily secured and preserved.

In the second place, the delegates sent by the various state commissions, being empowered to act in such general conferences as was suggested on page 94, should report to their respective commissions upon such uniform proposals for legislation as have been agreed upon at the conferences, and the commissions should be required to draft such proposals and recommend them to their legislatures. In this way not only would uniformity be secured to a much greater degree than it has been, but it would be initiated in all new legislation which should in future arise out of the exigencies of the times. The legislatures would not fail to act upon such recommendations, for in them on the one hand they find the authority and combined opinion of the national conference of commissioners representing the people of the entire nation, on the other hand the will of the people in their own commonwealth to whom they themselves, as well as the commission, are responsible. The opportunities to thwart legislation through bribery would be minimized; publicity would supplant secrecy, and justice to both parties would be promoted. The state commissions would come to be of direct assistance, to the legislatures on the one hand, acting as a committee on transportation and helping to maintain the dignity and authority of administration, and to the national commission on the other hand, by acting as supervisors of interstate, as well as of state commerce,<sup>1</sup> and in reporting to that commission information or breaches of the laws. Most of the traffic to-day is interstate<sup>2</sup> so that there seems

<sup>1</sup>Cf. Statement of Judge McDill: Senate Committee Report. Testimony, p. 949. Also Railroad Commission law of North Carolina, sec. 6.

<sup>2</sup>In Iowa 70 per cent.; in Massachusetts 80 per cent.

to be a necessity for state commissions to undertake more of the work than as a rule they have done thus far, to relieve the interstate commission of some part of the flood of work that now falls to it to perform. The national commission on its part would render the state valuable assistance so that the efforts would be mutual and the benefits would accrue equally to all.

It is believed that coöperation of the nature suggested would be the most potent means that could be used to effect changes, mould politics, enforce regulation and compel obedience to the laws. Coöperation in the executive department of our government is no less in harmony with the spirit of our democratic institutions than coöperation in the legislative branch as represented by our Federal Congress. The purpose of both is the same, namely: to secure an interchange of ideas, harmony and uniformity; the one in the promulgation of law, the other in administering that law. Doubtless it is clearly understood that one commission could not exercise jurisdiction within the territorial bounds of another, nor the interstate commission interfere with traffic recognized and determined to be wholly within a single state; but there is no law against, and there can be no objection to, a commission becoming as efficient, as experienced, as successful as it is possible for it to become in regard to all matters with which it is connected. No one would venture to question the advisability of any such action or desire on the part of commissions, and there seems to be no better, no easier way than that just described—by COÖPERATION. This is, then, the one important step necessary whereby efficiency in railroad regulations through commissions may be

secured. In any event ultimate success is to be attained not by revolution, but by evolution and by the steady pressure of that kind of public opinion which is quick to enforce penalties for wrong doing, and quick to remedy complaints when they are sustained, yet conservative always.

Such conservative public sentiment can be fostered and enlightened by means of frequent and accurate statistical reports, by inspector's reports, and by newspaper matter gleaned from reliable sources. It would then, it is believed, respond readily to the demands of society and would perform its true functions in becoming what it should be, the final arbiter in all disputed questions, whether of politics, society or economics.

It is to be hoped that the time is not far distant when the great West shall have attained the happy results that have accrued through a conservative spirit to the great East; when enlightened public interest and sentiment in the railroad will become automatically adjusted to the commissions they have created, or shall create hereafter; when these commissions, empowered to administer the laws necessary for the regulation of the railroad industry, shall perform their duties with due regard to the interests of both sides; and when the roads shall come to see that their interests are identical with those of the people, and that what is the best policy for one is also the best policy for the other.<sup>1</sup>

In conclusion it may be said that the commission system in its history and development shows not so much failure as inactivity. This is to be accounted for by the fact that it lacks the proper adjustment of

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<sup>1</sup>Testimony, p. 746.

powers and the proper amount of power to meet the needs of the times. "Men are now coming to realize," says Dr. Henry C. Adams, "the disastrous consequences likely to emerge from the continued sway of irresponsible corporate power. They see that an extension of governmental agency can alone retain for them the fruits of an advanced industrial civilization."<sup>1</sup> The extension of governmental agency as proposed in the foregoing discussion should be made, it is believed, with a view to the principle of coöperation among state and national commissions. Through the permanent organization and establishment of such a scheme the changes proposed earlier in the discussion could be realized and thus efficiency in railroad regulation guaranteed. Organization is the spirit of the period and the tendency of the times. It is to be seen in every branch of business. If judiciously maintained with a view to the interests of all, it is a lasting benefit, if promulgated in the spirit of hostility and opposition to the equipoise of industrial relations, it soon falls in ruins. Railroad organizations when effected for the purpose of securing greater efficiency of management, and for the purpose of maintaining peace and harmony among themselves without injury to others, are commendable; but when effected to defeat legislation, to oppress the people and to satisfy their own ambition for self-aggrandizement they are wrong and dangerous.

In the nature of the case a railroad cannot be operated solely with a view to self-interest. It owes its existence to the state, and it must perform its

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<sup>1</sup>"Relation of the State to Industrial Action." Publications of the American Economic Association, Vol. 1, No. 6, p. 84.



duties to the state in accordance with the wishes and for the interests of the state. The state, on her part, has a positive industrial office in regulating this industry, and should do so with the full consciousness of its importance to industrial society and the world's life.

The railroad industry is the greatest single industry in the world at the present time. In the United States it provides a living directly for 3,000,000 persons, or about one in twenty-two of the total population. It wields capital represented by bonds and stocks to the inconceivable amount of \$8,518,718,578. Its freight business aggregates 539,639,583 tons, and it carries 472,171,343 passengers annually. It earns a net profit of \$320,109,428 upon 153,385,37 miles of road, or \$2,087 per mile per annum.<sup>1</sup> It is an industry which lies at the foundation of all other modern industries, without which the wheels of trade would stand still, and commerce become but a mere incident in history. It is an industry which, in all departments of life—social, political and industrial—is by far the most important of them all; and which, when misdirected, is more disastrous than war; but well directed and controlled it becomes an obedient servant to mankind equally with the greatest natural forces of the universe in which man moves.

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<sup>1</sup>"Second Annual Report of Statistician of Interstate Commerce Commission," 1889.

## APPENDIX.

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### GENERAL EXPLANATORY NOTE.

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The exhibits here presented are concerned chiefly with positive provisions of the state laws.

The notes at the bottom of each table are inserted to qualify, explain or complete the data given in the body of the table.

Key to signs used in the tables—

The cross (x) indicates that the item noted in the heading is a feature of the laws of the state or territory named in the margin. It stands for an affirmative answer to questions asked in the heading.

The circle (o) indicates that the item noted in the heading is *not* a feature of the laws of the state or territory named in the margin. It stands for a negative answer.

The star (\*) indicates that the datum given has not been verified by the commission named in the margin.

The exponents (o<sup>1</sup>), (x<sup>2</sup>), etc., refer only to notes at bottom of table.

The data exhibited have been collected from the laws, statutes, acts, constitutions, etc. of nearly every state and territory in the Union; from the latest

reports of the various state commissions, so far as such reports were accessible, and from correspondence with the commissioners and state officers.

The data have been verified, with the exception of Connecticut, New Hampshire, and South Carolina, by the state commissioners themselves or by their secretaries; and in states and territories without commissioners, by some executive officer.

The railroad systems represented upon the map (Appendix B) have been copied from the Official Railway Guide (1888). The aim in constructing this map has not been completeness, which would necessarily lead to confusion, but rather to illustrate as simply and as clearly as possible the important principle referred to in the text.









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